

## **Exhibit 18**

# **SCHOOL DISTRICT/LOCAL GOVERNMENT ENTITY PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO EXCLUDE TESTIMONY OF SCHOOL DISTRICT EXPERTS**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

- - -  
IN RE: SOCIAL MEDIA : Case No.  
ADOLESCENT : 4:22-MD-03047-YGR  
ADDICTION/PERSONAL : MDL No. 3047  
INJURY PRODUCTS :  
LIABILITY LITIGATION, :  
:  
This Document Relates to:  
All Actions :

- - -  
SEPTEMBER 5, 2025

- - -  
Videotaped deposition of  
ROBERT KLEIN, taken pursuant to notice,  
was held at the law offices of Kessler  
Topaz Meltzer & Check, LLP, 280 King of  
Prussia Road, Radnor, Pennsylvania 19087,  
commencing at 9:29 a.m., on the above  
date, before Amanda Dee Maslynsky-Miller,  
a Court Reporter and Certified Realtime  
Reporter.

- - -  
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12  
13 ALSO PRESENT:

14 Brian McGee, Videographer

15  
16 - - -  
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(It is hereby stipulated and agreed by and among counsel that sealing, filing and certification are waived; and that all objections, except as to the form of the question, will be reserved until the time of trial.)

- - -

VIDEO TECHNICIAN: We are now on the record. My name is Brian McGee. I'm the videographer for Golkow, a Veritext division. Today's date is September 5th, 2025, and the time is 9:29 a.m.

This video deposition is being held in Radnor, PA, in the matter of In Re: Social Media Adolescent Addiction/Personal Injury Products Liability Litigation for the United States District Court Northern District of California.

The deponent is Robert

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1 Klein. Counsel will be noted on  
2 the stenographic record.

3 The court reporter is Amanda  
4 Miller and will now swear in the  
5 witness.

6 - - -

7 ROBERT KLEIN, after having  
8 been duly sworn, was examined and  
9 testified as follows:

10 - - -

11 EXAMINATION

12 - - -

13 BY ATTORNEY PISTILLI:

14 Q. Good morning, Mr. Klein. My  
15 name is Chris Pistilli, and I represent  
16 the Meta defendants in this lawsuit.

17 Will you please state your  
18 full name for the record?

19 A. Robert Lawrence Klein.

20 Q. And you were engaged by  
21 plaintiff school districts as an  
22 expert --

23 ATTORNEY HORVATH: Sorry, I  
24 can't hear the witness. Can

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1           everybody else hear him?   Maybe  
2           it's my issue.

3       BY ATTORNEY PISTILLI:

4           Q.       Mr. Klein, you were engaged  
5       by the plaintiff school districts in this  
6       litigation against Meta, TikTok, YouTube  
7       and Snap?

8           A.       Yes.

9           Q.       Are you represented by  
10      counsel at this deposition?

11          A.       Personally?   I don't believe  
12      so.

13          Q.       Let's go over some ground  
14      rules today.

15                   Do you understand that  
16      you're under oath today just as if you  
17      were in a court in front of a judge?

18          A.       Yes.

19                   ATTORNEY HORVATH:

20          Mr. Klein, can you say something?

21                   THE WITNESS:   Yes.

22                   Who is speaking?

23                   ATTORNEY YEATES:   Who is  
24      this?

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1 - - -

2 (Whereupon, a discussion off  
3 the record occurred.)

4 - - -

5 BY ATTORNEY PISTILLI:

6 Q. Mr. Klein, is there anything  
7 that would prevent you from giving  
8 complete and accurate testimony today?

9 A. No.

10 Q. You understand that the  
11 court reporter is writing down everything  
12 that you and I say, right?

13 A. Yes.

14 Q. And that's very difficult to  
15 do if we're talking over one another. So  
16 let's both try our best to not do that.

17 Can you do that with me?

18 A. Yes.

19 Q. And if at any point you  
20 don't understand my question for any  
21 reason, could you please let me know, and  
22 I'll rephrase it for you?

23 A. Okay.

24 Q. And unless you do that and



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1 you go ahead and answer my question, I'm  
2 going to assume you understood my  
3 question.

4 Is that fair?

5 A. Yes.

6 Q. If at any point today you  
7 need a break, please just let me know and  
8 we can make that happen, okay?

9 A. Yes.

10 Q. Have you ever been deposed  
11 before?

12 A. Yes, I have.

13 Q. Approximately how many  
14 times?

15 A. Between 90 and 100.

16 Q. And were those depositions  
17 as expert witnesses?

18 A. Yes.

19 Q. And did those depositions  
20 typically involve marketing studies that  
21 you had performed?

22 A. Surveys. Yes.

23 Q. What sort of surveys?

24 A. Surveys related to Lanham

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1 Act litigation. Issues of likelihood of  
2 confusion, secondary meaning, genericism,  
3 consumer behavior.

4 Q. Anything else?

5 A. Patent damages.

6 Let me see if I can -- false  
7 advertising.

8 That covers the vast  
9 majority of them.

10 Q. And have you ever testified  
11 in court?

12 A. Yes.

13 Q. Approximately on how many  
14 occasions?

15 A. Twenty to 25. Some in the  
16 U.S. and -- some in Canada and the rest  
17 in the U.S.

18 Q. Have you ever offered expert  
19 opinions in cases involving Meta?

20 A. Yes.

21 Q. On how many occasions?

22 A. Once.

23 ATTORNEY PISTILLI: Do we  
24 want to go off the record for a

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1 minute?

2 VIDEO TECHNICIAN: The time  
3 is 9:34 a.m. We are off the  
4 record.

5 - - -

6 (Whereupon, a brief recess  
7 was taken.)

8 - - -

9 VIDEO TECHNICIAN: The time  
10 is 9:35 a.m., and we are on the  
11 record.

12 - - -

13 (Whereupon, Exhibit Klein-1,  
14 No Bates, 5/18/25 Social Media and  
15 Teacher Time Survey Methodology  
16 and Results, Breathitt, was marked  
17 for identification.)

18 - - -

19 BY ATTORNEY PISTILLI:

20 Q. Mr. Klein, I've handed you a  
21 document that's been marked as Exhibit-1.

22 Is that a report that you  
23 submitted in the Breathitt case?

24 A. Yes, it appears to be.

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1 Q. And am I right that you  
2 submitted a total of 12 reports in  
3 connection with these matters?

4 A. That's correct.

5 Q. One each for Breathitt,  
6 Charleston, DeKalb, Harford, Irvington  
7 and Tucson, opening reports?

8 A. I believe that's correct,  
9 yes.

10 Q. And then a rebuttal report  
11 in each of those same six cases?

12 A. Yes.

13 Q. Is there anything in your  
14 reports that you need to correct or  
15 amend?

16 A. No.

17 Q. So the reports are final,  
18 complete and accurate?

19 A. Yes.

20 Q. Did you draft these 12  
21 reports yourself?

22 A. Yes.

23 Q. Did you have staff assisting  
24 you in preparing the reports?

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1 A. Yes.

2 Q. Who are -- what staff?

3 A. Staff at Applied Marketing  
4 Science.

5 Q. And approximately how many  
6 people at Applied Marketing Science  
7 assisted you in drafting the report?

8 A. Well, when you say "drafting  
9 the report," and "in preparing the  
10 report," I mean, all the words are mine.

11 But the issues of the  
12 appendices and putting all that together,  
13 I was -- I was assisted by four  
14 individuals at Applied Marketing Science.

15 Q. Okay. And you're a  
16 principal of Applied Marketing Science?

17 A. No. I'm an employee.

18 Q. You're an employee.

19 Do you receive a share in  
20 the profits of Applied Marketing Science?

21 A. Applied Marketing Science  
22 has a profit sharing plan that all the  
23 employees participate in.

24 Q. And what's your position at

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Page 21

1 Applied Marketing Science?

2 A. I'm a chairman emeritus. I  
3 started the company 35 years ago and  
4 turned over the day-to-day management  
5 about ten years ago.

6 Q. Did the attorneys for the  
7 plaintiffs review drafts of your report?

8 A. Yes.

9 Q. Provide input?

10 A. Certainly helped with proper  
11 identification of the parties and the,  
12 you know, formatting issues.

13 Q. Anything else?

14 A. Not beyond minor wording  
15 changes.

16 Q. How many hours did you spend  
17 drafting your 12 reports?

18 A. I'm not really sure how to  
19 answer that. I know how much time I  
20 spent in total.

21 Q. Sure. How much time did you  
22 spend in total?

23 A. Just over 100 hours between  
24 February and -- through July.

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1 Q. And do you know how much  
2 time other individuals at your firm spent  
3 working on the report during that same  
4 period?

5 A. No, I don't.

6 Q. And what is your hourly  
7 rate?

8 A. I think it's \$835 an hour.

9 Q. So to date you've made  
10 approximately \$83,500 on this matter?

11 A. No.

12 Q. Why is that?

13 A. I don't get a -- that's --  
14 that doesn't come to me directly. I get  
15 paid a salary.

16 Applied Marketing Science  
17 got that much money for time that I spent  
18 on it.

19 Q. What did you do to prepare  
20 for your deposition today?

21 A. I read over my report, the  
22 various rebuttal reports that made  
23 reference to me, my reply report, and I  
24 met with counsel.

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1 Q. Did you review any  
2 literature in preparing for your  
3 deposition today?

4 A. Not in preparation for the  
5 deposition, no.

6 Q. On how many occasions did  
7 you meet with counsel in preparation for  
8 your deposition?

9 A. Twice.

10 Q. And for how long did you  
11 meet with them?

12 A. Three or four hours on  
13 Wednesday and a couple of hours  
14 yesterday.

15 Q. Other than counsel, did you  
16 discuss the subject of your deposition  
17 with anyone?

18 A. Not the subject of the  
19 deposition, no.

20 Q. Did you discuss anything  
21 related to your deposition with others?

22 A. Yes. Several of the  
23 individuals at Applied Marketing Science  
24 were listening in to the discussions we



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1 had in preparation for the deposition.

2 Q. What did you discuss with  
3 your colleagues at Applied Marketing?

4 A. I really didn't discuss  
5 anything with the colleagues. They were  
6 able to provide certain details about the  
7 billing, for example.

8 Q. Approximately when were you  
9 first retained in this matter?

10 A. It was in February of 2025.

11 Q. All right. If you could,  
12 please, take a look at Exhibit-1, take a  
13 look at Page A-2, A-2.

14 A. A-2? Oh, I thought you said  
15 18.

16 Q. Sorry.

17 Starting here on Page A-2,  
18 is this a complete list of your prior  
19 expert testimony in the past four years?

20 A. It's the list of the cases  
21 in which I have provided testimony either  
22 in deposition or in court, yes.

23 Q. And if you look at Page A-3,  
24 one of the matters referenced is Klein,

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1 et al., versus Meta Platforms, Inc.

2 Do you see that?

3 A. Yes.

4 Q. And that's the case you  
5 referred to previously?

6 A. That's correct.

7 Q. And you were also engaged by  
8 the plaintiffs' lawyers in that case,  
9 correct?

10 A. That's correct.

11 Q. And you submitted two expert  
12 reports in that case?

13 A. I believe so, yes.

14 Q. And you testified at two  
15 depositions?

16 A. Yes.

17 Q. You were testifying against  
18 Meta in those depositions, right?

19 A. Yes.

20 Q. But then before trial, the  
21 plaintiffs dropped your opinions,  
22 correct?

23 A. I really don't know what's  
24 going on in that case.

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1           Q.       You weren't asked to testify  
2     at trial?

3                   ATTORNEY JACOBSON:

4           Objection.   Foundation.

5                   THE WITNESS:   I didn't  
6           realize there had been a trial.

7     BY ATTORNEY PISTILLI:

8           Q.       To your knowledge, has your  
9     testimony ever been excluded?

10          A.       Not to my knowledge, no.

11          Q.       To your knowledge, has a  
12     judge ever discounted your testimony in a  
13     written opinion?

14          A.       Yes.

15                   ATTORNEY PISTILLI:   Could we  
16     look at Tab 27?

17                               -   -   -

18                   (Whereupon, Exhibit Klein-2,  
19     No Bates, LexisNexis Results,  
20     Steak-umm Co, LLC v Steak 'Em Up,  
21     Inc., was marked for  
22     identification.)

23                               -   -   -

24     BY ATTORNEY PISTILLI:

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1 Q. Have you seen Exhibit-2  
2 before, Mr. Klein?

3 ATTORNEY JACOBSON: Are  
4 there hard copies for counsel?

5 THE WITNESS: Yes.

6 BY ATTORNEY PISTILLI:

7 Q. And does this relate to  
8 litigation matter entitled Steak-umm Co.,  
9 LLC v Steak 'Em Up, Inc.?

10 A. Yes.

11 Q. And did you testify as an  
12 expert in that matter?

13 A. Yes, I did.

14 Q. And if you could look at  
15 Page 19.

16 Do you see the top of Page  
17 19?

18 A. Yes.

19 Q. And in this -- well, strike  
20 that.

21 This is a written opinion by  
22 the court in the Steak-umm matter?

23 A. That's what it appears to  
24 be, yes.

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1 Q. And do you see where the  
2 court wrote, Accordingly, numerous flaws  
3 in Mr. Klein's survey undermine the  
4 reliability of his numbers.  
5 Dr. Rappeport estimates that no more than  
6 a 10 percent likelihood of confusion is a  
7 fair estimate for Mr. Klein's results.  
8 Dr. Rappeport's estimate is based solely  
9 on his expertise. I find and conclude  
10 there is no evidence of likelihood of  
11 confusion due to the multiple flaws in  
12 the Klein's survey and Dr. Rappeport's  
13 critique of the Klein survey. Having no  
14 evidence demonstrating a reliable  
15 percentage of a likelihood of confusion,  
16 this court gives no weight to the survey  
17 results.

18 Do you see that?

19 A. Yes.

20 Q. And so in this opinion, the  
21 court concluded that there were numerous  
22 fundamental flaws in your survey,  
23 correct?

24 A. The flaws that the judge is

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1 referring to has to do with the -- my  
2 client in that case's theory of the case.

3           They -- Steak-umm brought  
4 the action because they were -- believed  
5 that the name Steak 'Em Up would confuse  
6 people and lead them to believe that the  
7 Steak 'Em Up product was made with  
8 Steak-umms. And the judge in this case  
9 didn't believe that that constituted a  
10 likelihood of confusion.

11           And so what I was measuring  
12 wasn't what the judge thought the case  
13 was all about but was what my client  
14 thought the case was all about.

15           So my survey was directed at  
16 the issue raised by my client in this  
17 matter. And the judge decided that that  
18 really wasn't the relevant theory of the  
19 case.

20           Q.     If you look at Page 18, it  
21 says, Because Mr. Klein failed to ask the  
22 connection affiliation question to all  
23 consumers, his survey fails to show  
24 source confusion.

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1 Do you see that?

2 A. On which page?

3 Q. The very bottom of Page 18.

4 A. This is basically what I  
5 just described to you, that the results  
6 of a survey asking respondents whether a  
7 restaurant named Steak 'Em Up serves  
8 Steak-umm products is almost meaningless.  
9 Relevant survey questions concern  
10 source -- confusion of source,  
11 sponsorship and this wasn't that.

12 This was, though, what the  
13 plaintiff in the matter believed was --  
14 was relevant, so.

15 Q. As an expert, you just did  
16 what the plaintiffs told you in that  
17 case?

18 ATTORNEY JACOBSON:

19 Objection.

20 THE WITNESS: No. As an  
21 expert, I did what was alleged to  
22 be the -- the harm. And so I  
23 designed the survey to address  
24 that issue.

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1 BY ATTORNEY PISTILLI:

2 Q. Well, the court criticized  
3 you for failing to ask an important  
4 question, correct?

5 A. In the court's mind, yes.

6 But it wasn't the important  
7 question in the -- in terms of the theory  
8 of the case that the plaintiff's attorney  
9 had raised.

10 ATTORNEY PISTILLI: Tab 28.

11 - - -

12 (Whereupon, Exhibit Klein-3,  
13 No Bates, LexisNexis Result,  
14 Maker's Mark Distillery, Inc. v  
15 Diageo N. Am., Inc., was marked  
16 for identification.)

17 - - -

18 THE WITNESS: There are two  
19 here. I have two copies.

20 This is one of my favorites.

21 Go ahead.

22 BY ATTORNEY PISTILLI:

23 Q. Do you recognize the  
24 document that's been marked as Exhibit-3?



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1 A. Yes.

2 Q. What is it?

3 A. It's the -- well, it's a  
4 LexisNexis document that includes the  
5 opinion of the court, yes.

6 Q. It includes the opinion of  
7 the court in a case called Maker's Mark  
8 Distillery, Inc. v Diageo North American,  
9 Inc.?

10 A. Yes.

11 Q. And that was a case in which  
12 you served as an expert witness?

13 A. That's correct.

14 Q. You conducted a market  
15 research survey in that case?

16 A. Yes.

17 Q. Let's turn to Page 25.

18 Do you see the first full  
19 paragraph on Page 25?

20 A. Yes.

21 Q. The court writes, quote,  
22 Cuervo offered the survey evidence of  
23 Robert Klein to show that confusion did  
24 not exist. Klein concluded that only

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1 2 percent of respondents were confused  
2 about the two brands. In the court's  
3 view, the study and its conclusions were  
4 flawed in several significant ways.

5 Do you see that?

6 A. Yes.

7 Q. Do you agree that the court,  
8 in this case, reached the conclusion that  
9 your study was flawed in several  
10 significant ways?

11 A. Well, that's what they  
12 wrote. The -- his main problem with  
13 the -- with my survey was that it was  
14 conducted online. And in his view, no  
15 one would ever buy alcoholic beverages  
16 online. But that's clearly not the case.

17 Q. Well, he, in fact -- the  
18 court goes on to give four separate  
19 reasons that, in its view, your survey  
20 was flawed, correct?

21 A. Yes.

22 I don't want to go too far  
23 out on a limb, but this was home cooking.  
24 It was a case brought in Louisville,

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1 Kentucky, by an international firm  
2 against a local -- local firm.

3 I disagree with his -- his  
4 conclusions here.

5 Q. So your view is that the  
6 judge was acting in bad faith?

7 ATTORNEY JACOBSON:

8 Objection. Mischaracterizes  
9 testimony.

10 THE WITNESS: I think the  
11 judge did not completely  
12 understand the survey I conducted  
13 and the basis on which I offered  
14 my opinion.

15 BY ATTORNEY PISTILLI:

16 Q. Just so we're clear, only  
17 one of the four reasons offered by the  
18 judge had to do with the fact that the  
19 survey was conducted online, correct?

20 A. The second item has to do  
21 with the way in which the products were  
22 identified, the -- which he believes  
23 suggests that they're not affiliated.

24 This was a \$100 bottle of

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1     tequila that Jose Cuervo put out. And  
2     they used a drippy wax seal on the top of  
3     the bottle. And Maker's Mark was  
4     claiming that that would confuse people  
5     and they would see that drippy wax seal  
6     and think that Maker's Mark was the  
7     source of the Jose Cuervo tequila.

8                 You've got tremendous price  
9     differences between these products, you  
10    know, as well as the fact that the Jose  
11    Cuervo product is sold in a custom-made  
12    wooden box, and each year a different  
13    Mexican artist produces that  
14    commemorative box. Also, they had  
15    stopped using that drippy wax seal  
16    several years earlier.

17                And so what the judge  
18    actually did was award no damages and  
19    told them to stop doing something that  
20    they had already stopped doing.

21                Q.     Well, one of the reasons  
22    that the court excluded your opinion was  
23    because it found that your control group  
24    was problematic and may have skewed the

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1 results, correct?

2 A. That -- and that was related  
3 to the color of the wax seal that was  
4 used. Maker's Mark brought -- raised  
5 that issue long after I had done my  
6 survey.

7 Q. Well, that wasn't my  
8 question, sir.

9 My question was just, did  
10 the court find that your control group  
11 was problematic and may have skewed the  
12 results?

13 A. That's what it says. I  
14 don't agree, but.

15 Q. And then the court also  
16 noted that a number of other courts had  
17 criticized your surveys.

18 Do you see that?

19 A. This was an interesting  
20 case, because the case cited didn't  
21 involve me and took place years before I  
22 ever served as an expert witness.

23 The Indianapolis Colts case  
24 was Jacob Jacoby, not me, and was in, I

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1 think, 1985. As I said, it was long  
2 before I ever served as an expert  
3 witness.

4 Q. But you were an expert  
5 witness in Board of Regents v KST  
6 Electronics Limited, right?

7 A. That's correct. And in that  
8 case, the judge found that I was very  
9 persuasive in my arguments, if you want  
10 to look at that case, and found for my --  
11 my client in that case.

12 Q. Well, the court here says  
13 that you asked leading questions, right?

14 A. Yes. I disagree.

15 But that -- that case,  
16 you're talking about the Board of Regents  
17 case. That was a case in which the --  
18 again, that was the original case in  
19 which the judge had mistaken me for  
20 somebody else.

21 ATTORNEY PISTILLI: Let's  
22 take a look at Tab 29.

23 - - -

24 (Whereupon, Exhibit Klein-4,

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1           No Bates, LexisNexis Result,  
2           ComponentOne LLC v ComponentArt  
3           Inc., was marked for  
4           identification.)

5                               -   -   -

6       BY ATTORNEY PISTILLI:

7           Q.       I've handed you a document  
8       that's been marked as Exhibit-4.

9                       Do you recognize this  
10       document?

11          A.       Yes.

12          Q.       What is it?

13          A.       It's a decision in the case  
14       of ComponentOne v ComponentArt.

15          Q.       And this was a case in  
16       federal district court?

17          A.       Yes.

18          Q.       And you testified as an  
19       expert in that case?

20          A.       Yes.

21          Q.       Let's take a look at  
22       Page 18.

23                       You see there where it says,  
24       ComponentOne has offered the opinion of

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1 Robert Klein?

2 A. Yeah. Mine has some  
3 highlighting in it.

4 - - -

5 (Whereupon, a discussion off  
6 the record occurred.)

7 - - -

8 BY ATTORNEY PISTILLI:

9 Q. This was another case where  
10 you did a marketing survey, correct?

11 A. Correct.

12 Q. If you look with me at  
13 Page 20, do you see there where it says,  
14 The court finds that Klein's survey  
15 suffers from fundamental methodological  
16 flaws that prevent it from creating a  
17 genuine issue of material fact as to  
18 actual confusion. Although defendant's  
19 argument that many grounds exist in which  
20 the court could find Klein's survey  
21 fundamentally unsound is strong, the  
22 court will focus on Klein's choice of  
23 stimuli.

24 Do you see that?



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1 A. No. But --

2 Q. The bottom of Page -- on  
3 Page 20, the bottom of the first column.

4 A. Okay. Yes.

5 Q. So in this decision, another  
6 federal court found that there were  
7 fundamental methodological flaws in your  
8 survey, correct?

9 A. That's what they wrote, yes.  
10 I disagree, but.

11 Q. But that's -- that's what  
12 the court concluded, right?

13 A. Yes. This is another  
14 situation like the Steak-umm's case where  
15 the confusion that was alleged was due to  
16 ComponentArt changing its name from --  
17 and I forget what they were called before  
18 they were ComponentArt, but they changed  
19 their name to Component -- to  
20 ComponentArt, which meant that in  
21 listings of component -- these are  
22 software components.

23 In any listing of  
24 manufacturers or providers of these

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1 components, ComponentArt's name would now  
2 be listed above ComponentOne in a  
3 directory or list of exhibitors or  
4 anything like that. And that's what  
5 upset the ComponentOne people.

6 And so that was the type of  
7 stimulus I used in conducting the survey,  
8 which -- so it was a survey that was  
9 directed specifically at what the  
10 allegations were in the complaint.

11 And the court found that  
12 there were other ways in which people  
13 would encounter the marks that weren't  
14 covered by my survey.

15 Q. When you're doing a  
16 marketing survey, you need to replicate  
17 market conditions, right?

18 ATTORNEY JACOBSON:

19 Objection. Foundation.

20 THE WITNESS: In general,  
21 the more you can replicate market  
22 conditions, the better. But it is  
23 a survey, so there is that type of  
24 limitation.

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1 BY ATTORNEY PISTILLI:

2 Q. And the court found that  
3 your survey failed to replicate market  
4 conditions, correct?

5 A. It replicated the market  
6 condition that my client was -- was  
7 concerned about.

8 But I recognize, and the  
9 court recognized, that there were other  
10 situations in which people would  
11 encounter the marks.

12 ATTORNEY PISTILLI: Tab 30.

13 - - -

14 (Whereupon, Exhibit Klein-5,  
15 No Bates, LexisNexis Result,  
16 Avocado Plus Inc. v Johanns, was  
17 marked for identification.)

18 - - -

19 BY ATTORNEY PISTILLI:

20 Q. I've handed you a document  
21 that's been marked as Exhibit-5.

22 Do you recognize Exhibit-5?

23 A. Yes. This was from a case  
24 that was, what, 20 years ago? Yes.

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1 Q. This is a federal court  
2 litigation in a matter called Avocados  
3 Plus Inc. versus Johanns?

4 A. Yes.

5 Q. And you testified as an  
6 expert in this case?

7 A. Yes.

8 Q. This was another marketing  
9 research survey?

10 A. That's correct.

11 Q. Take a look with me at  
12 Page 13, please.

13 Do you see where it says, In  
14 support of this contention, plaintiffs  
15 hired a marketing consultant and  
16 statistician to conduct a survey gauging  
17 the likelihood that consumers will, in  
18 fact, attribute the avocado promotions to  
19 them.

20 Do you see that?

21 A. No. I --

22 Q. Sure. Look under the  
23 section, Defendants will be given an  
24 opportunity --

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1 A. Yes.

2 Q. -- to conduct limited  
3 discovery.

4 A. Okay. Yes.

5 Q. And does this reflect that  
6 you were hired to conduct a survey  
7 gauging the likelihood of consumers  
8 attributing avocado promotions to  
9 plaintiffs?

10 A. That wasn't what I was  
11 actually hired -- hired to survey. The  
12 original assignment had to do with the  
13 use of the check-off provision in the  
14 Agricultural Department in promotion of  
15 various agricultural products.

16 And I don't know if you're  
17 familiar with the check-off procedure,  
18 but essentially ads, like, you know,  
19 "beef, it's what for dinner" or "got  
20 milk" or stuff like that are actually ads  
21 put out by the Agricultural Department  
22 and funded by a tax or check-off of the  
23 manufacturers.

24 And each of the various

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1 industry groups has sued the Agricultural  
2 Department over the use of this  
3 check-off, saying that it's compelled  
4 speech and they're being forced to  
5 finance speech that they don't  
6 necessarily agree with.

7 The beef industry, for  
8 example, would rather be able to promote  
9 its own Angus beef or grass-fed beef or  
10 something like that as opposed to just  
11 beef in general.

12 And each of the industry  
13 groups has sued the Agricultural  
14 Department and generally won until the --  
15 until the beef case came along.

16 And in that beef case, the  
17 argument was -- or the argument that won  
18 was, this really isn't personal speech,  
19 this is government speech and the  
20 government can say anything it wants.  
21 And if you don't like what the government  
22 says, elect a different government.

23 And that argument actually  
24 won at the Supreme Court. And that took

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1 place about six months before this  
2 particular case came up.

3 And so the avocado growers  
4 had been in -- in litigation with the  
5 Agricultural Department. And so the  
6 survey that I did tried to measure who  
7 they would attribute the avocado ads to.  
8 And no one that saw the ads would  
9 attribute it to the U.S. government, they  
10 would attribute it to avocado growers and  
11 so on.

12 The judge in this case felt  
13 that there was a need for the avocado  
14 purchasers or potential purchasers of  
15 avocados to actually attribute it to the  
16 specific growers who had brought the  
17 suit.

18 And so at the last minute,  
19 we had to modify the survey that I was  
20 conducting to add a question about the  
21 specific Mexican growers who, of course,  
22 no one would recognize.

23 And that was the source of  
24 the argument about a leading question.

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1 Q. Just so I'm clear, you were  
2 tasked with conducting a survey to figure  
3 out whether consumers thought the  
4 advertisement was speech by the  
5 government or speech by the plaintiffs,  
6 correct?

7 A. Yes. Correct.

8 Q. And what the court concluded  
9 was that in conducting that survey, the  
10 format you used was unnecessarily  
11 suggestive, correct?

12 A. That's what they concluded,  
13 yes.

14 Q. Let's talk a little bit  
15 about your background.

16 You have a Bachelor's degree  
17 in mechanical engineering?

18 A. That's correct.

19 Q. And a Master's degree in  
20 management?

21 A. That's correct.

22 Q. You don't have any other  
23 post-secondary degrees, do you?

24 A. No.



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1 Q. You're not a sociologist?

2 A. No.

3 Q. Let's take a look at your  
4 LinkedIn profile.

5 ATTORNEY PISTILLI: Tab 25.

6 - - -

7 (Whereupon, Exhibit Klein-6,  
8 No Bates, Robert Klein LinkedIn  
9 Profile, was marked for  
10 identification.)

11 - - -

12 BY ATTORNEY PISTILLI:

13 Q. Do you recognize the  
14 document I've handed you that's been  
15 marked as Exhibit-6?

16 A. I don't believe I've ever  
17 seen it before. But I guess I know what  
18 it is.

19 Q. Is it your LinkedIn profile?

20 A. It appears to be.

21 Q. And you've never seen your  
22 own LinkedIn profile before?

23 A. If I have, it was a long  
24 time ago.

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1 Q. But to the best of your  
2 understanding, is this your current  
3 LinkedIn profile?

4 ATTORNEY JACOBSON:

5 Objection. Foundation.

6 THE WITNESS: I don't know.

7 I mean, it could be.

8 BY ATTORNEY PISTILLI:

9 Q. Have you been at Applied  
10 Marketing Science for approximately 36  
11 years and six months?

12 A. Yes.

13 Q. And do you see that your  
14 LinkedIn profile says that you've been at  
15 Applied Marketing Science for 36 years  
16 and six months?

17 A. Yes.

18 Q. And do you see in the  
19 summary section it says you're an expert  
20 witness on issues relating to survey  
21 research related to trademarks, secondary  
22 meaning, customer confusion, class  
23 certification, antitrust, false  
24 advertising and sales forecasting,

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1 et cetera.

2 Do you see that?

3 A. Yes.

4 Q. This isn't a case about  
5 trademarks, secondary meaning, customer  
6 confusion, class certification,  
7 antitrust, false advertising or sales  
8 forecasting, is it?

9 A. No, it's not.

10 Q. Then do you see where it  
11 goes on to list your specialties?

12 A. Yes.

13 Q. And it, again, says your  
14 specialties are survey research related  
15 to trademarks, secondary meaning,  
16 customer confusion, class certification,  
17 antitrust, false advertising, and sales  
18 forecasting.

19 A. Et cetera, yes.

20 Q. Yes. And so this case  
21 doesn't fall into any of the specifically  
22 enumerated categories of your  
23 specialties, correct?

24 A. It's not one of these listed

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1 specialties, no.

2 Q. And the survey you conducted  
3 in this case is not a market research  
4 study, correct?

5 A. I think it falls into the  
6 general category of market research. I  
7 mean, it's a survey of a population to  
8 understand what their experiences have  
9 been.

10 Q. Market research surveys are  
11 focused on consumer decisions about, for  
12 instance, whether to buy a product,  
13 right?

14 ATTORNEY JACOBSON:

15 Objection. Foundation.

16 THE WITNESS: They can be  
17 that.

18 BY ATTORNEY PISTILLI:

19 Q. What's your definition of a  
20 market research survey?

21 A. It would be a survey of  
22 people to understand their beliefs,  
23 behaviors, motivations.

24 Q. Relating to market goods?

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1           A.       I think market research  
2       generally refers to survey research that  
3       covers a wide range of topics.

4                    I don't think that market  
5       research is -- has a fundamentally  
6       different definition than survey  
7       research.

8           Q.       But market research surveys  
9       focus on consumer preferences, attitudes,  
10      behaviors and needs regarding products,  
11      right?

12                   ATTORNEY JACOBSON:

13           Objection.

14                   THE WITNESS:   It's certainly  
15      not limited to that.

16      BY ATTORNEY PISTILLI:

17           Q.       Have you ever offered expert  
18      testimony before in a case regarding  
19      anything other than a consumer product?

20           A.       Sure.

21           Q.       What are some examples?

22           A.       The -- consumer products?  
23      Pharmaceuticals and hip implants.

24                    Let me just -- this is only

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1 in the last four years, so.

2 Strip clubs, pesticides,  
3 travel websites.

4 Those are the ones that come  
5 to mind.

6 Q. Everything you just  
7 mentioned, though, involved goods or  
8 services available for purchase, correct?

9 ATTORNEY JACOBSON:

10 Objection.

11 THE WITNESS: Not  
12 necessarily. But in general,  
13 probably most of them were.

14 BY ATTORNEY PISTILLI:

15 Q. Pharmaceuticals are products  
16 that people can buy, right?

17 A. Right. But it wasn't people  
18 that we were interviewing. We were  
19 interviewing doctors.

20 Q. Right. Because doctors have  
21 to prescribe medicines in order for  
22 consumers to be able to purchase them,  
23 right?

24 A. Yes.

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1 Q. Same thing with hip  
2 implants?

3 A. Well, it really had to do  
4 with the -- how doctors recognize one  
5 product compared to another, or one brand  
6 versus another.

7 Q. Right. So it had to do with  
8 the purchase -- the market purchase of  
9 products?

10 ATTORNEY JACOBSON:

11 Objection.

12 THE WITNESS: Not -- not so  
13 much the market purchase of  
14 products, but physicians or  
15 doctor -- sorry, doctors'  
16 preferences for one manufacturer  
17 over another.

18 BY ATTORNEY PISTILLI:

19 Q. So preferences between two  
20 different brands?

21 A. Okay.

22 Q. Similarly, travel websites  
23 sell services, right?

24 A. The -- yes.

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1           Q.       And pesticides are consumer  
2 products that people can buy, consumers  
3 and others?

4           A.       And others, yes.

5           Q.       Commercial products?

6           A.       Right.

7                   ATTORNEY PISTILLI:   Let's  
8 take a look at Tab 31. We'll mark  
9 this as Exhibit-7.

10                               -   -   -

11                               (Whereupon, Exhibit Klein-7,  
12 No Bates, Applied Marketing  
13 Science Web Page, was marked for  
14 identification.)

15                               -   -   -

16 BY ATTORNEY PISTILLI:

17           Q.       Do you recognize Exhibit-7?

18           A.       It appears to be a page from  
19 Applied Marketing Sciences' website.

20           Q.       And that's the firm that  
21 you're chair emeritus of, right?

22           A.       Employee of, yes.

23           Q.       Employee and chair emeritus?

24           A.       Yes.



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1 Q. And this lists various  
2 specialties of your firm, correct?

3 A. Yes.

4 Q. It lists eight specific  
5 specialties, right?

6 A. Specific areas in which we  
7 provide litigation support services, yes.

8 Q. And one of those is  
9 trademark infringement, right?

10 A. Yes.

11 Q. This isn't a trademark  
12 infringement case, right?

13 A. That's correct.

14 Q. One of them is deceptive  
15 advertising?

16 A. Yes.

17 Q. This isn't a deceptive  
18 advertising case, right?

19 A. That's correct.

20 Q. One of them is class  
21 actions?

22 A. That's correct.

23 Q. This isn't a class action,  
24 right?

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1 A. No, it's not a class action.

2 Q. Next is claim  
3 substantiation, right?

4 A. Yes.

5 Q. This isn't a case involving  
6 claim substantiation, right?

7 A. I don't believe so.

8 Q. Next is patent infringement?

9 A. Yes.

10 Q. This isn't a patent case,  
11 right?

12 A. This is not a patent case.

13 Q. The next is content  
14 analysis?

15 A. Yes.

16 Q. This case doesn't involve  
17 content analysis, right?

18 A. Correct.

19 Q. The next is antitrust,  
20 right?

21 A. Yes.

22 Q. This isn't an antitrust  
23 case, right?

24 A. That's correct.

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1 Q. And the last is rebuttal  
2 surveys and reports.

3 You didn't do a rebuttal  
4 survey in this case, did you?

5 A. No, I didn't.

6 ATTORNEY PISTILLI: Let's  
7 take a look at Tab 32.

8 - - -

9 (Whereupon, Exhibit Klein-8,  
10 No Bates, Expert Witnesses: When  
11 Are They Necessary and Does  
12 Daubert/Kumho Make a Difference?,  
13 was marked for identification.)

14 - - -

15 BY ATTORNEY PISTILLI:

16 Q. I'm handing you a document  
17 that's been marked as Exhibit-8.

18 Let me know if you recognize  
19 Exhibit-8.

20 Do you recognize Exhibit-8?

21 A. Yes.

22 Q. What is it?

23 A. It's an article that I  
24 co-authored with two attorneys that --

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1 based on a presentation that we made at a  
2 conference for, I think, IP litigators.

3 Q. And do you stand by the  
4 opinions that you offered in this  
5 article?

6 A. I think this article was  
7 accurate at the time that I wrote it.

8 Q. Do you think it's become  
9 inaccurate in some way since you wrote  
10 it?

11 A. I haven't really looked at  
12 it since then.

13 Q. Look with me, if you would,  
14 at Page 14, Requirements of a good  
15 survey.

16 A. Yes.

17 Q. And you list a number of  
18 relevant factors that you believe are  
19 requirements of a good survey.

20 Do you see that?

21 A. Yes. They are taken from  
22 the reference Manual for Complex  
23 Litigation.

24 Q. Do you agree that those are,

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1 in fact, requirements of a good survey?

2 A. I think these are dimensions  
3 on which a good survey, or any survey,  
4 should be evaluated.

5 Q. And do you agree that one of  
6 the requirements of a good survey is that  
7 the questions asked were clear and not  
8 leading?

9 A. That's an important piece,  
10 yes.

11 Q. It's also important that the  
12 survey was conducted by qualified persons  
13 following proper interview procedures?

14 A. Yes. That's -- again, these  
15 are taken from the Manual for Complex --

16 Q. Well, I'm just asking if  
17 you -- since you quoted them in your  
18 article, I'm just asking if you agree  
19 with them?

20 A. Yeah. I probably quoted  
21 them in the -- in my report.

22 Q. You also agree it's  
23 important that the process -- survey  
24 process be conducted in a way to ensure

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1 objectivity?

2 A. Yes.

3 Q. And one of the things that  
4 you note specifically in order to ensure  
5 objectivity is having an understanding of  
6 whether the persons surveyed are aware of  
7 its purpose in litigation?

8 A. The -- yes. That has to do  
9 with making sure that the survey is  
10 double-blind.

11 Q. Well, because it can lead to  
12 non-objective results if the survey  
13 participants are aware that they're  
14 responding to a litigation survey,  
15 correct?

16 A. It's possible. But it's  
17 not -- it's not been my -- my experience  
18 that that changes people's opinions.

19 Q. One of the things you wrote  
20 here was that in order to ensure  
21 objectivity, you need to determine if the  
22 survey involved persons who are aware of  
23 its purpose in the litigation, right?

24 A. I didn't really follow your

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1 question.

2 Q. That's fine. We can move  
3 on.

4 This was not a peer-reviewed  
5 article, correct?

6 A. No, it wasn't.

7 Q. If we can go back to  
8 Exhibit-1, Tab 1. And if you could go to  
9 Page A-1 with me.

10 A. Okay.

11 Q. Sorry. Page A-2, apologies.

12 Do you see there there's a  
13 list of publications?

14 A. Yes.

15 Q. Is that a complete list of  
16 your publications in the past ten years?

17 A. Yes.

18 Q. What was the subject matter  
19 of the quality function deployment  
20 article?

21 A. Quality function deployment  
22 is a technique for product design that  
23 was imported from Japan by the auto  
24 industry in the early '80s and has now

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1     been widely used in a variety of  
2     industries to make sure that the  
3     customer's wants and needs are linked to  
4     the features of a particular product.

5                     And so quality function  
6     deployment, or QFD for short, is what we  
7     started Applied Marketing Science to be  
8     focused on. And John Hauser, Abbie  
9     Griffin were -- Abbie was an employee.  
10    John Hauser was my MIT professor that I  
11    co-founded Applied Marketing Science  
12    with. And he's written a number of  
13    articles about QFD and its application.

14                    Q.     Was this publication that  
15    you co-authored in the Wiley  
16    International Encyclopedia of Marketing  
17    peer reviewed?

18                    A.     I don't know.

19                    Q.     Do you remember going  
20    through a peer-review process as part of  
21    your publication of the article?

22                    A.     I know it was reviewed for  
23    inclusion in the -- in this encyclopedia.  
24    But I don't know if there was a formal



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1 peer-review process. It was reviewed by  
2 peers, but.

3 Q. The third and final article  
4 listed is called, Voice of the Customer.

5 What was the subject matter  
6 of that publication?

7 A. So similar to QFD, the voice  
8 of the customer is an input to the QFD  
9 process. So it's understanding customer  
10 wants and needs and structuring them in a  
11 way that allows you to link them up with  
12 the product engineering features of a  
13 particular product.

14 Q. And this was published in  
15 the same encyclopedia?

16 A. Yes.

17 Q. So I take it your answer  
18 about whether or not it was peer reviewed  
19 would be the same?

20 A. Yes.

21 Q. Do you have any publications  
22 prior to 2010?

23 A. Yes.

24 Q. To your knowledge, were any

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1 of them peer reviewed?

2 A. I don't believe so.

3 Q. Let's turn -- sticking with  
4 Exhibit-1, let's look at Appendix E.

5 Could you just help me  
6 understand what these different  
7 categories are?

8 I think I know invitations  
9 sent is just how many people received an  
10 e-mail from your firm inviting them to  
11 participate in the survey, correct?

12 A. Yes.

13 Q. And then completed survey,  
14 does that mean everyone who filled it out  
15 all the way to the end?

16 A. That's correct.

17 Q. Can you explain to me what  
18 disqualified means?

19 A. In -- if you look at the --  
20 starting with D -- Page D-12, you can see  
21 the program -- the program -- the teacher  
22 survey with the programmer instructions.  
23 And so there are various places in which  
24 people can respond and it wouldn't be --

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1 they wouldn't continue.

2 For example, the screening  
3 question at the top, QS2, Are you a --  
4 and it asks, Teacher, administrator,  
5 counselor, other. And so if they don't  
6 choose teacher, then they -- they don't  
7 continue the survey and so they are  
8 terminated, in survey language.

9 And so, you know -- or if  
10 they are an elementary school teacher,  
11 pre-K to kindergarten, or something like  
12 that, then they're not going to continue.

13 Q. Thanks.

14 And then can you help me  
15 understand what are all the different  
16 ways that one could get disqualified from  
17 the survey?

18 A. The -- let me see if I can.

19 So if they answer QS2 with  
20 something other than being a teacher,  
21 they would be disqualified. If they  
22 chose the wrong school district, they  
23 would be disqualified. If they didn't  
24 choose middle or high school, they would

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1 be disqualified. If they were under 21,  
2 they were disqualified -- if they  
3 answered that they were under 21 they  
4 were disqualified.

5 And QS7 is a quality control  
6 check where we make sure they're really  
7 paying attention to the question. And if  
8 they don't answer that correctly, they're  
9 disqualified or terminated.

10 QS8 has a list of  
11 instructions that they qualified for the  
12 survey, but we want to make sure that  
13 they do it in one session without being  
14 interrupted, that they keep the browser  
15 minimized -- maximized for the entire  
16 survey, that while taking the survey they  
17 don't consult with other websites or  
18 other electronic or written materials,  
19 that they answer the questions on their  
20 own without consulting any other person,  
21 and if they normally wear glasses when  
22 viewing electronic screens to wear them  
23 during the survey.

24 And if they answer that they

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1 don't understand or don't agree with the  
2 instructions, then they are terminated.

3 Q. And then are -- you have  
4 separate listings for disqualified and  
5 terminated.

6 But are those always going  
7 to be the same?

8 A. Where -- where are you  
9 looking?

10 Q. Sorry. I'm back on E-1.

11 A. So disqualified is the sum  
12 of the terminates and the failed district  
13 validation.

14 Q. And what does failed  
15 district validation mean?

16 A. They chose a different  
17 district than the one that they were  
18 actually in.

19 Q. You're referring there to  
20 their answer to QS3?

21 ATTORNEY JACOBSON: Can you  
22 point us what page you're on,  
23 counsel?

24 ATTORNEY PISTILLI: D-13.

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1 THE WITNESS: I believe so,  
2 yes.

3 BY ATTORNEY PISTILLI:

4 Q. And now could you just help  
5 me understand what incomplete/break-offs  
6 are?

7 A. Incompletes or break-offs  
8 are when they get partway through the  
9 questionnaire and don't complete it.

10 Q. And let me ask you some  
11 questions about that.

12 When you're -- when you open  
13 up the questionnaire, can you click  
14 through without putting in an answer?

15 A. No.

16 Q. So you can never get past  
17 the very first page unless you answer the  
18 question on the first page?

19 A. I can't see the first page.  
20 There it is.

21 So unless they click next,  
22 they can't get to the next page.

23 Q. And then on the next page  
24 they have to put in the CAPTCHA

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1 information or they can't go forward?

2 A. That's correct.

3 Q. And then I understand we're  
4 looking at this specific example that  
5 doesn't have any incomplete or  
6 break-offs.

7 But could you tell me  
8 generally how your survey treated  
9 incomplete/break-offs?

10 A. They weren't included in the  
11 analysis data set.

12 Q. So you essentially assumed  
13 that they were similarly situated as  
14 non-respondents?

15 A. I'm not sure we made any  
16 assumptions about them. We just didn't  
17 have a complete data set for them.

18 Q. But they were treated, for  
19 purposes of your analysis, the same way  
20 that you treated someone who didn't  
21 respond at all, correct?

22 ATTORNEY JACOBSON:

23 Objection. Foundation.

24 THE WITNESS: Well, that

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1 would be the effect of not  
2 including them in the sample,  
3 analysis sample.

4 ATTORNEY PISTILLI: Take a  
5 five-minute break?

6 ATTORNEY JACOBSON: Sounds  
7 good.

8 VIDEO TECHNICIAN: The time  
9 is 10:44 a.m., and we are off the  
10 record.

11 - - -

12 (Whereupon, a brief recess  
13 was taken.)

14 - - -

15 VIDEO TECHNICIAN: The time  
16 is 10:58 a.m., and we are on the  
17 record.

18 BY ATTORNEY PISTILLI:

19 Q. If you could, please, turn  
20 back to Exhibit-1 again, which is your  
21 opening report in Breathitt and take a  
22 look with me at Page 5.

23 A. Yes.

24 Q. Do you see in Paragraph 20



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1 you write, Prior to sending survey  
2 invitations to each teacher on the list,  
3 the district was instructed to send a  
4 warming e-mail to the teachers on the  
5 list informing them of an upcoming survey  
6 and asking for their cooperation in  
7 promptly completing the survey. The  
8 district was instructed to make sure not  
9 to reveal the purpose of the survey or to  
10 make any mention of social media.

11 Do you see that?

12 A. Yes.

13 Q. Do you know whether warming  
14 e-mails were sent to the six districts?

15 A. It's my understanding they  
16 were, yes.

17 Q. Do you have copies of those  
18 warming e-mails?

19 A. No, I do not.

20 Q. Have you ever seen the text  
21 of the warming e-mails sent by any of the  
22 six districts?

23 A. I believe I have.

24 Actually -- that's the

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1 invitation. They were sent by the  
2 districts, and we provided them with some  
3 wording to use. But they essentially  
4 composed the e-mail and sent it.

5 Q. What wording did you provide  
6 for them to use?

7 A. Something along the lines of  
8 what was shown here in Paragraph 20.

9 Q. Do you know what words each  
10 or any of the districts actually used?

11 A. As I sit here today, I don't  
12 think I can -- I know how to answer that.

13 ATTORNEY PISTILLI: We call  
14 for the production of the warming  
15 e-mails.

16 BY ATTORNEY PISTILLI:

17 Q. So you don't know, for  
18 instance, if they --

19 ATTORNEY JACOBSON: And I'll  
20 just ask counsel to make that  
21 request in writing after this so  
22 that we can consider it.

23 BY ATTORNEY PISTILLI:

24 Q. So you don't know whether

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1 they followed your instructions or not,  
2 correct?

3 ATTORNEY JACOBSON:

4 Objection. Foundation.

5 THE WITNESS: Certainly, I  
6 expect them to follow the  
7 instructions, yes.

8 BY ATTORNEY PISTILLI:

9 Q. But you didn't verify by  
10 looking at what they actually sent,  
11 correct?

12 ATTORNEY JACOBSON:

13 Objection.

14 THE WITNESS: One of my  
15 staff may have. But I did not.

16 BY ATTORNEY PISTILLI:

17 Q. Let's look at some of the  
18 results of your survey, starting with  
19 Breathitt.

20 You also see in Paragraph 20  
21 it says, Plaintiff provided a list of all  
22 the middle and high school teachers  
23 currently employed full time in the  
24 district. This list contained a total of

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1 70 e-mails.

2 Do you see that?

3 A. Yes.

4 Q. So that means there were 70  
5 full-time middle and high school teachers  
6 in Breathitt?

7 ATTORNEY JACOBSON:

8 Objection. Foundation.

9 THE WITNESS: That would be  
10 my understanding, yes.

11 BY ATTORNEY PISTILLI:

12 Q. And now let's take a look at  
13 Page 12 of your report.

14 Does Page 12 tell us, in the  
15 chart on the top, that only three  
16 Breathitt middle school teachers  
17 responded to the question regarding  
18 classroom distraction for a decade ago,  
19 i.e., 2014?

20 A. Three out of the 19 who  
21 responded for the current --

22 Q. Well, there are 70 teachers  
23 in the district total?

24 A. There were 70 names we

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1 received, yes.

2 Q. Yes.

3 And of those 70 names, only  
4 seven individuals responded to the  
5 question regarding in-class distraction a  
6 decade ago, correct?

7 A. There were seven teachers  
8 that were currently employed who were  
9 eligible to answer that question, yes.

10 Q. Only seven answered it,  
11 right?

12 A. There were only seven that  
13 were asked it, yes.

14 Q. And you extrapolated from  
15 those seven answers to the entire  
16 Breathitt teacher population, correct?

17 A. No, I don't think that's a  
18 correct -- correct statement.

19 Q. Well, you -- you reported  
20 time spent addressing what you call  
21 social media distraction in class for the  
22 2014 time period, correct?

23 A. I reported the data that we  
24 collected, yes.

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1           Q.       Right. And that data showed  
2       a number of minutes that you assert  
3       are -- were spent dealing with social  
4       media-related in-class distraction in  
5       2014, correct?

6           A.       For these respondents, yes.

7           Q.       But just so we're clear, the  
8       figure you reported was based on only a  
9       total of seven responses, correct?

10          A.       There were only seven  
11       teachers who were employed in --  
12       currently employed full time who were  
13       eligible to answer that -- that question,  
14       either because they started teaching  
15       after 2014, which would be the main  
16       reason that they wouldn't have been  
17       asked.

18          Q.       Right. But just so the jury  
19       is clear, the figure you report for  
20       Breathitt for the 2014 time period is  
21       based on a sum total of seven answers?

22                   ATTORNEY JACOBSON:

23               Objection. Asked and answered.

24                   THE WITNESS: There were

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1           seven teachers who were eligible  
2           to answer that question, yes.

3                   ATTORNEY PISTILLI: Let's go  
4           ahead and mark the next five  
5           reports all at once.

6                   - - -

7                   (Whereupon, Exhibit Klein-9,  
8           No Bates, Social Media and Teacher  
9           Time Survey Methodology and  
10          Results, Charleston, was marked  
11          for identification.)

12                  - - -

13                  (Whereupon, Exhibit  
14          Klein-10, No Bates, 5/18/25 Social  
15          Media and Teacher Time Survey  
16          Methodology and Results, DeKalb,  
17          was marked for identification.)

18                  - - -

19                  (Whereupon, Exhibit  
20          Klein-11, No Bates, 5/18/25 Social  
21          Media and Teacher Time Survey  
22          Methodology and Results, Harford,  
23          was marked for identification.)

24                  - - -

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1 (Whereupon, Exhibit  
2 Klein-12, No Bates, 5/18/25 Social  
3 Media and Teacher Time Survey  
4 Methodology and Results,  
5 Irvington, was marked for  
6 identification.)

7 - - -

8 (Whereupon, Exhibit  
9 Klein-13, No Bates, 5/18/25 Social  
10 Media and Teacher Time Survey  
11 Methodology and Results, Tucson,  
12 was marked for identification.)

13 - - -

14 BY ATTORNEY PISTILLI:

15 Q. So we've handed you exhibits  
16 9, 10, 11, 12 and 13. We'll go through  
17 them one by one.

18 But I can represent to you  
19 that those are your -- copies of your  
20 opening report for the other five  
21 bellwether cases.

22 A. Okay.

23 Q. And we'll start with  
24 Exhibit-9, which is Tab 2.



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1                   If you would look with me,  
2     please, again, at Paragraph 20, which is  
3     on Page 5 of Exhibit-9.

4                   A.       Sorry, which page?

5                   Q.       Page 5, Paragraph 20.

6                   Have you found Paragraph 20?

7                   A.       Paragraph 20, yes.

8                   Q.       And does this indicate that  
9     you sent your survey for the Charleston  
10    School District to a total of 1,620  
11    e-mail addresses?

12                  A.       Yes.

13                  I wish I had titled the --  
14    these with the name of the school  
15    district. But --

16                  Q.       I can help -- we're going to  
17    flip, in a second, to Page 12, which is  
18    titled, if that helps you.

19                  A.       Yeah. Yes.

20                  Q.       Okay. And so looking now at  
21    Page 12, there were just 15 middle school  
22    teachers who responded to the  
23    a-decade-ago question?

24                  A.       Right. Out of the 102 that

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1       responded to the invitation.

2               Q.       And there were just 18 high  
3       school teachers who responded to the  
4       a-decade-ago question?

5               A.       Right. Out of the 131 who  
6       were qualified to complete the survey,  
7       yes.

8               Q.       So that means that the  
9       figures you report supposedly relating to  
10      in-class social media distraction for  
11      2014 were based on the responses of only  
12      33 individuals, correct?

13              A.       Right. Out of -- they were  
14      the ones who were qualified to provide an  
15      answer in that -- that time period.

16              Q.       Let's flip back to Page 2,  
17      if you would.

18              A.       Of Exhibit-9?

19              Q.       Yes.

20              A.       Okay.

21              Q.       And your conclusion is that,  
22      From 2014 through the present, middle and  
23      high school teachers in Charleston had an  
24      increasing amount of scheduled classroom

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1 instruction time diverted to the use of  
2 social media platforms?

3 A. I'm sorry, I don't  
4 understand your question.

5 Q. Is your conclusion that from  
6 2014 through the present, middle and high  
7 school teachers in Charleston had an  
8 increasing amount of scheduled classroom  
9 instruction time diverted due to the use  
10 of social media platforms?

11 ATTORNEY JACOBSON:

12 Objection to form.

13 THE WITNESS: The data shows  
14 that over that, you know, ten-year  
15 time period there was an increase  
16 in diverted time.

17 BY ATTORNEY PISTILLI:

18 Q. Well, let's look at some of  
19 the numbers.

20 You see that once in-person  
21 teaching resumed after the pandemic, high  
22 school teachers allegedly spent an  
23 average of 14.9 percent of time diverted  
24 to deal with social media issues?

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1           A.       You're reading from  
2     Paragraph 2?

3           Q.       Yes.

4           A.       Okay. And, I'm sorry, could  
5     you ask -- do that again?

6           Q.       You see that once in-person  
7     teaching resumed after the pandemic, high  
8     school teachers allegedly spent an  
9     average of 14.9 percent of time diverted  
10    to deal with social media use issues?

11          A.       That's not what's written  
12    here exactly.

13                 It says, Once in-person  
14    teaching resumed, following the pause on  
15    in-person teaching due to the pandemic,  
16    the diverted time was 12 percent, 12.0  
17    percent for middle school teachers and  
18    14.9 percent for high school teachers.

19          Q.       Well, I'm just asking you,  
20    do you agree that once in-person teaching  
21    resumed post-pandemic, high school  
22    teachers allegedly spent an average of  
23    14.9 percent of time diverted to deal  
24    with social media issues?

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1 ATTORNEY JACOBSON:

2 Objection. Form.

3 THE WITNESS: Well, it's not  
4 allegedly. I mean, this is the  
5 data I collected.

6 BY ATTORNEY PISTILLI:

7 Q. The data you collected shows  
8 that 14.9 percent of time was diverted to  
9 deal with social media issues after  
10 in-person teaching resumed after the  
11 pandemic?

12 A. Yes. Just after.

13 Q. And it was 12.9 percent for  
14 middle school students -- middle school  
15 teachers?

16 A. Yes.

17 Q. And then in school year  
18 '23/'24, high school teachers spent  
19 13.7 percent of their classroom time  
20 diverted due to social media use?

21 A. That's what the survey  
22 indicates, yes.

23 Q. And 9.2 percent for middle  
24 school teachers?

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1 A. Yes.

2 Q. So from post-pandemic to  
3 2023/2024, the average amount of time  
4 diverted due to social media use fell for  
5 high school teachers, right?

6 ATTORNEY JACOBSON:

7 Objection. Form.

8 THE WITNESS: Compared to  
9 the just after in-person classes  
10 resumed. But compared to the  
11 baseline of 2014, they're still  
12 significantly larger.

13 BY ATTORNEY PISTILLI:

14 Q. But you'll agree that from  
15 2023 -- from post-pandemic to 2023/2024,  
16 the time spent by high school teachers  
17 diverted to social media use fell,  
18 correct?

19 ATTORNEY JACOBSON:

20 Objection. Form.

21 THE WITNESS: That's what  
22 the survey measured, yes.

23 BY ATTORNEY PISTILLI:

24 Q. Yes.

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1 And it fell by 3.7 percent  
2 for middle school teachers, right?

3 A. I'm sorry, where are you  
4 looking for that number?

5 Q. Well, what -- what did you  
6 report for 2023/2024 for middle school  
7 teachers?

8 A. 8 -- 9.2 percent.

9 Q. And what did you report for  
10 immediate post-pandemic?

11 A. 12.9 percent.

12 Q. So it went from 12.9 percent  
13 to 9.2 percent, correct?

14 A. Yes.

15 Q. So it went down by  
16 3.7 percent, correct?

17 ATTORNEY JACOBSON:

18 Objection to form.

19 THE WITNESS: Yes, that's  
20 what we measured.

21 BY ATTORNEY PISTILLI:

22 Q. And then for the current  
23 year, 2025, high school teachers spent  
24 4.3 percent of their classroom

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1 instruction time on time devoted to  
2 social media use?

3 A. That's what we measured,  
4 yes.

5 Q. And you measured 7.1 percent  
6 for middle school teachers?

7 A. Yes.

8 Q. And so from 2023/'24 to  
9 2025, the average amount of time diverted  
10 due to social media use fell 9.4 percent  
11 for high school teachers?

12 ATTORNEY JACOBSON:

13 Objection to form.

14 THE WITNESS: 9.4 percentage  
15 points, yes.

16 BY ATTORNEY PISTILLI:

17 Q. And it also fell for middle  
18 school teachers, correct?

19 ATTORNEY JACOBSON:

20 Objection. Form.

21 THE WITNESS: That's what we  
22 measured.

23 BY ATTORNEY PISTILLI:

24 Q. So from '23/'24 school year



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1 to the '25 current school year, teachers  
2 overall spent less classroom instruction  
3 time diverted due to social media, right?

4 ATTORNEY JACOBSON:

5 Objection. Form.

6 THE WITNESS: Again, that  
7 was what the survey showed.

8 BY ATTORNEY PISTILLI:

9 Q. Now, if you could bear with  
10 me, I want to go back for a minute to  
11 Exhibit-8 -- sorry. Exhibit-1.

12 If you could look at Page 12  
13 with me -- no, not Page 12.

14 Sorry. Let's look at  
15 Page 2.

16 Do you see that post -- from  
17 post-pandemic to 2023, would you agree  
18 with me that the average amount of time  
19 diverted due to social media use for high  
20 school teachers fell by 1.2 percent?

21 ATTORNEY JACOBSON:

22 Objection. Form.

23 THE WITNESS: This is  
24 Exhibit-1?

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1 BY ATTORNEY PISTILLI:

2 Q. Yes.

3 A. And in total or --

4 Q. For high school teachers.

5 A. For high school teachers?

6 From -- and the time period,  
7 again, was from just after --

8 Q. From post -- well, for  
9 post-pandemic for high school teachers,  
10 it was 5.9 percent, correct?

11 A. Right.

12 Q. And then in the 2023/2024  
13 school year, it was 5.5 percent, right?

14 A. Yes.

15 Q. And so it fell from  
16 post-pandemic to 2023-2024, right?

17 ATTORNEY JACOBSON:

18 Objection. Form.

19 THE WITNESS: According to  
20 the data we collected, yes.

21 BY ATTORNEY PISTILLI:

22 Q. And then, similarly, for  
23 middle school teachers, post-pandemic it  
24 was 7.8 percent?

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1 A. Yes.

2 Q. And then in the 2023/2024  
3 school year, it was 6.3 percent?

4 A. Yes.

5 Q. Which, again, means it  
6 dropped from post-pandemic to 2023/2024,  
7 correct?

8 ATTORNEY JACOBSON:

9 Objection. Form.

10 THE WITNESS: Yes, that's  
11 what we measured.

12 BY ATTORNEY PISTILLI:

13 Q. And then looking from 2023  
14 to 20 -- 2023/'24 to the '25 school year,  
15 the average amount of time diverted due  
16 to social media use fell 9.4 percent for  
17 high school teachers, right?

18 ATTORNEY JACOBSON:

19 Objection to form.

20 THE WITNESS: No.

21 Am I looking at the right --  
22 I've got -- mine shows 5.5 percent  
23 going to 3.9 percent.

24 BY ATTORNEY PISTILLI:

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1 Q. So it's 3.9 percent for the  
2 2025 school year, correct?

3 A. '24/'25, yes.

4 Q. And it was higher than that,  
5 6.3 percent, in the prior school year,  
6 correct?

7 A. I thought you were looking  
8 at high school teachers.

9 Q. Sorry. Let's start over,  
10 and we'll do high school first, okay?

11 A. Okay.

12 Q. So just doing high school.  
13 5.9 percent was the  
14 post-pandemic number, correct?

15 A. Correct.

16 Q. And then in '23/'24, it went  
17 down from 5.9 percent to 5.5 percent,  
18 correct?

19 ATTORNEY JACOBSON:

20 Objection to form.

21 THE WITNESS: That's what we  
22 measured, yes.

23 BY ATTORNEY PISTILLI:

24 Q. And then you measured that

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1 in '24/'25, it went down further to  
2 3.9 percent?

3 ATTORNEY JACOBSON:

4 Objection to form.

5 THE WITNESS: That's what I  
6 measured, yes.

7 BY ATTORNEY PISTILLI:

8 Q. So you measured that from  
9 return to class after the pandemic to the  
10 current school year, it went down by --  
11 from 5.9 percent to 3.9 percent, right?

12 ATTORNEY JACOBSON:

13 Objection. Form.

14 THE WITNESS: Yes, that's  
15 what we measured.

16 BY ATTORNEY PISTILLI:

17 Q. Yep.

18 And now we'll turn to middle  
19 school.

20 Middle school, post-pandemic  
21 was 7.8 percent, correct?

22 A. That's correct.

23 Q. And then when we get to the  
24 '23/'24 school year, it goes down to

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1 6.3 percent, correct?

2 ATTORNEY JACOBSON:

3 Objection to form.

4 THE WITNESS: Yes, that's  
5 what we measured.

6 BY ATTORNEY PISTILLI:

7 Q. And then it goes down  
8 further in the current school year to  
9 5.2 percent?

10 ATTORNEY JACOBSON:

11 Objection to form.

12 THE WITNESS: Again, that's  
13 what we measured.

14 BY ATTORNEY PISTILLI:

15 Q. Yep.

16 So what you measured is that  
17 the amount of diverted time went down  
18 from return to class after the pandemic  
19 to the current school year, correct?

20 ATTORNEY JACOBSON:

21 Objection. Form.

22 THE WITNESS: Yes, that's  
23 correct.

24 BY ATTORNEY PISTILLI:

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1 Q. All right. Let's take a  
2 look at Exhibit-10.

3 Is Exhibit-10 your opening  
4 report for the DeKalb plaintiff?

5 A. Yes.

6 Q. And then let's look again,  
7 if we could, at Paragraph 2.

8 A. Okay.

9 Q. And in the 2023/'24 school  
10 year, you reported that high school  
11 teachers spent 14.9 percent of their  
12 classroom time diverted due to social  
13 media use?

14 A. Yes.

15 Q. And 10.2 percent for middle  
16 school teachers?

17 A. That's correct.

18 Q. And then in the current  
19 year, high school teachers, you reported,  
20 spent 11.7 percent of their classroom  
21 time diverted due to social media?

22 A. Yes.

23 Q. And 5.2 percent for middle  
24 school teachers?

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1 A. That's correct.

2 Q. And so from 2023/'24 school  
3 year to the '24/'25 school year, the  
4 average amount of time diverted due to  
5 social media use fell 3.2 percent for  
6 high school teachers?

7 ATTORNEY JACOBSON:

8 Objection. Form.

9 THE WITNESS: That's -- I  
10 believe that's correct, yes.  
11 That's what we reported --  
12 measured.

13 BY ATTORNEY PISTILLI:

14 Q. And you reported that it  
15 fell, over that same time period,  
16 5 percent for middle school teachers?

17 ATTORNEY JACOBSON:

18 Objection. Form.

19 THE WITNESS: Five  
20 percentage points.

21 BY ATTORNEY PISTILLI:

22 Q. Five percentage points, yes.

23 So from '23/'24 to '24/'25,  
24 teachers overall spent less classroom



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1 instruction time diverted due to social  
2 media use according to your data, right?

3 ATTORNEY JACOBSON:

4 Objection. Form.

5 THE WITNESS: Yes.

6 BY ATTORNEY PISTILLI:

7 Q. If you could turn to  
8 Paragraph 20 with me.

9 A. Of Exhibit-10?

10 Q. Exhibit-10, yes. Sticking  
11 with Exhibit-10.

12 And does this indicate that  
13 you sent a total of 2,977 surveys out to  
14 DeKalb teachers?

15 ATTORNEY JACOBSON:

16 Objection. Form.

17 THE WITNESS: Which -- which  
18 paragraph?

19 BY ATTORNEY PISTILLI:

20 Q. 20.

21 A. Yes. The list we had was  
22 2,977 e-mail addresses.

23 Q. And then let's take a look  
24 at Page 12, starting with the middle

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1 school teachers column.

2 Of the 2,977 surveys you  
3 sent out, you only had 12 responses from  
4 middle school teachers for the  
5 a-decade-ago, i.e., 2014 question,  
6 correct?

7 ATTORNEY JACOBSON:

8 Objection to form.

9 THE WITNESS: Well, again,  
10 only -- we had 70 total responding  
11 middle school teachers, and 12 of  
12 them were eligible to be asked the  
13 question about the 2014 time  
14 period.

15 BY ATTORNEY PISTILLI:

16 Q. But you sent the survey to  
17 2,977 people, correct?

18 A. Who are currently employed  
19 full time in the school district, yes.

20 Q. And of those, only 12 middle  
21 school teachers responded to that  
22 particular question?

23 A. No. Seventy middle school  
24 teachers responded to the survey, and 12

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1 of them were eligible to be asked the  
2 2014 question.

3 Q. Right. So only 12  
4 responded, right?

5 ATTORNEY JACOBSON:

6 Objection to form.

7 THE WITNESS: There are  
8 12 -- we have 12 responses for  
9 that time period.

10 BY ATTORNEY PISTILLI:

11 Q. And you have, from high  
12 school teachers, only 18 responses from  
13 that time period, right?

14 ATTORNEY JACOBSON:

15 Objection. Form.

16 THE WITNESS: We have 18  
17 responses from that time period.

18 BY ATTORNEY PISTILLI:

19 Q. And you extrapolated from  
20 those just 30 responses when you provided  
21 your amount-of-time-diverted figure for  
22 the 2014 time period, correct?

23 ATTORNEY JACOBSON:

24 Objection to form.

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1 THE WITNESS: The 2014 data  
2 is based on the number of teachers  
3 who responded.

4 BY ATTORNEY PISTILLI:

5 Q. Which is just 30, right?

6 ATTORNEY JACOBSON:

7 Objection. Form.

8 THE WITNESS: In total  
9 between the two, yes.

10 BY ATTORNEY PISTILLI:

11 Q. Let's turn now to  
12 Exhibit-11.

13 Does Exhibit-11 appear to be  
14 your opening report in the Harford case?

15 A. Yes.

16 Q. Let's take a look at  
17 Paragraph 2.

18 You reported that when  
19 in-person teaching resumed post-pandemic,  
20 high school teachers spent 18.6 percent  
21 of their classroom time on social media  
22 disruptions?

23 A. Well, the -- you paraphrased  
24 what it says there. The number is

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1 9.4 percent for middle school teachers  
2 and 18.6 percent for high school  
3 teachers.

4 Q. And then for the '23/'24  
5 school year, high school teachers  
6 reported 16.5 percent of their classroom  
7 disruptions were due to social media use?

8 A. Yes.

9 Q. And for middle school  
10 teachers that same year, it was  
11 8.9 percent?

12 A. That's correct.

13 Q. And so between when  
14 in-person teaching resumed post-pandemic  
15 and the '23/'24 school year, the amount  
16 of classroom disruption time reported by  
17 high school teachers fell 2.1 percentage  
18 points?

19 ATTORNEY JACOBSON:

20 Objection. Form.

21 THE WITNESS: Yes, that's  
22 what we measured.

23 BY ATTORNEY PISTILLI:

24 Q. You also measured that it

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1 fell for middle school teachers, right?

2 ATTORNEY JACOBSON:

3 Objection. Form.

4 THE WITNESS: Yes, that's  
5 correct.

6 BY ATTORNEY PISTILLI:

7 Q. And then for the current  
8 school year, '24/'25, high school  
9 teachers reported 10.6 percent of their  
10 classroom disruption time was spent  
11 dealing with social media issues?

12 A. Yes.

13 Q. And 5.7 percent for middle  
14 school teachers that school year?

15 A. Yes, that's correct.

16 Q. So from '23/'24 to '24/'25,  
17 the amount of time high school teachers  
18 reported spending dealing with social  
19 media issues fell 5.9 percentage points?

20 ATTORNEY JACOBSON:

21 Objection to form.

22 THE WITNESS: For high  
23 school teachers.

24 BY ATTORNEY PISTILLI:

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1 Q. Yep.

2 A. Yes.

3 Q. And it fell 3.2 percentage  
4 points for middle school teachers over  
5 that same one-year period?

6 ATTORNEY JACOBSON:

7 Objection. Form.

8 THE WITNESS: Yes.

9 BY ATTORNEY PISTILLI:

10 Q. Let's take a look at  
11 Paragraph 20.

12 Does this indicate that you  
13 sent 1,378 e-mails to middle and high  
14 school teachers in Harford?

15 A. That's correct.

16 Q. Let's turn to Page 12.

17 From the 1,378 surveys that  
18 you sent out, you only have 12 valid  
19 responses to the question relating to a  
20 decade ago from middle school teachers,  
21 right?

22 ATTORNEY JACOBSON:

23 Objection. Form.

24 THE WITNESS: Maybe I'm in

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1 the wrong exhibit. Which --  
2 Exhibit-11?

3 BY ATTORNEY PISTILLI:

4 Q. Yes. Oh, 21, not 12. My  
5 apologies.

6 A. Yes. I mean, that's how  
7 many were eligible to be asked the  
8 question out of the total respondents.

9 And we got the response rate  
10 that's not uncommon for unidentified  
11 surveys that are used without an  
12 incentive, Internet surveys.

13 Q. And then for high school  
14 teachers, you only had 26 valid responses  
15 to the questions relating to a decade ago  
16 from the 1,378 surveys you sent out,  
17 right?

18 ATTORNEY JACOBSON:

19 Objection to form.

20 THE WITNESS: I think the  
21 more appropriate is to look at the  
22 number that were teaching in the  
23 current year versus that because,  
24 you know, you can't ask questions



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1           about ten years ago for someone  
2           who just started teaching.

3       BY ATTORNEY PISTILLI:

4           Q.       Right. But your -- the  
5       percentages you report for time spent on  
6       in-class distraction relating to social  
7       media for the 2014 time period were based  
8       entirely on the responses of the 47  
9       individuals, correct?

10           ATTORNEY JACOBSON:

11           Objection to form.

12           THE WITNESS: Yes, we --  
13       those were the only ones who were  
14       eligible to be asked the question.

15       BY ATTORNEY PISTILLI:

16           Q.       Let's take a look at  
17       Exhibit-12.

18                   Is Exhibit-12 the opening  
19       report you submitted in the Irvington  
20       case?

21           A.       Yes.

22           Q.       Let's take a look at  
23       Paragraph 2.

24                   When in-person teaching

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1 resumed post-pandemic, high school  
2 teachers reported that 13.4 percent of  
3 their classroom disruptions were due to  
4 social media?

5 A. Yes. I mean, that's the  
6 number that's reported on Page 12 in the  
7 table.

8 Q. And it was 10 percent  
9 post-pandemic for middle school teachers?

10 A. Yes. Again, that's what --  
11 what's presented in the table on Page 12.

12 Q. And then last school year,  
13 '23/'24, high school teachers reported  
14 17.6 percent of their classroom  
15 disruptions were due to social media use?

16 A. Yes.

17 Q. And 4.9 percent for middle  
18 school teachers?

19 A. Yes.

20 Q. And so between when  
21 in-person teaching resumed post-pandemic  
22 and the '23/'24 school year, the amount  
23 of classroom disruption time reported by  
24 middle school teachers fell 5.1 percent?

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1 ATTORNEY JACOBSON:

2 Objection. Form.

3 THE WITNESS: 5.1 percentage  
4 points, yes.

5 BY ATTORNEY PISTILLI:

6 Q. And for the current year,  
7 2025, high school teachers reported  
8 9.9 percent of their classroom disruption  
9 time was spent dealing with social media  
10 issues?

11 A. That's correct.

12 Q. And it was 2.2 percent for  
13 middle school teachers?

14 A. Yes.

15 Q. So between '23/'24 and  
16 '24/'25, the amount of time high school  
17 teachers reported spending dealing with  
18 social media issues fell 7.7 percentage  
19 points?

20 ATTORNEY JACOBSON:

21 Objection. Form.

22 THE WITNESS: Yes, that's  
23 the number reported.

24 BY ATTORNEY PISTILLI:

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1 Q. And for middle school  
2 teachers from '23/'24 to '24/'25, it fell  
3 by 2.7 percentage points?

4 ATTORNEY JACOBSON:

5 Objection. Form.

6 THE WITNESS: That's what we  
7 measured, yes.

8 BY ATTORNEY PISTILLI:

9 Q. Let's take a look at  
10 Paragraph 20.

11 Does Paragraph 20 indicate  
12 that you sent the survey to a total of  
13 270 middle and high school teachers in  
14 Irvington?

15 A. Yes.

16 Q. And let's take a look at  
17 Page 12.

18 Does Page 12 indicate that  
19 of all the surveys you sent out, you only  
20 had nine responses to the question  
21 relating to social media in-class  
22 distraction during the 2014 time period  
23 from middle school teachers?

24 ATTORNEY JACOBSON:

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1           Objection.    Form.

2                   THE WITNESS:   Yes.   Of the  
3           41 who responded to the survey,  
4           yes.

5   BY ATTORNEY PISTILLI:

6           Q.       But you sent out a total of  
7   270 surveys, right?

8           A.       That's correct.

9           Q.       And then from high school  
10   teachers, you had just 13 responses for  
11   the 2014 time period?

12                   ATTORNEY JACOBSON:

13           Objection.   Form.

14                   THE WITNESS:   Of the 49 who  
15           are currently full-time teachers  
16           in high school -- the same high  
17           school, actually.

18   BY ATTORNEY PISTILLI:

19           Q.       And so that means that your  
20   percentages that you report relating to  
21   2014 are based on the responses of just  
22   22 individuals?

23                   ATTORNEY JACOBSON:

24           Objection.   Form.

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1 THE WITNESS: Yeah, again, I  
2 wouldn't have said just 22. But  
3 that's the number who are eligible  
4 to be asked that question, given  
5 that they're currently full-time  
6 teachers in the high school or  
7 middle school.

8 BY ATTORNEY PISTILLI:

9 Q. All right. Let's take a  
10 look at Exhibit-13.

11 Is this the opening report  
12 that you submitted in the Tucson case?

13 A. Yes.

14 Q. Let's take a look at  
15 Paragraph 2.

16 In 2014 for Tucson, middle  
17 school teachers reported 2.6 percent of  
18 their classroom disruptions were due to  
19 social media?

20 A. Middle school teachers in  
21 2014? Is that what you --

22 Q. Yes.

23 A. Yes. We measured  
24 2.6 percent.

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1 Q. And then at the beginning of  
2 2020, middle school teachers reported the  
3 same amount of classroom disruptions due  
4 to social media, right, 2.6 percent?

5 A. Yes.

6 Q. So for middle school  
7 teachers, there wasn't any increase from  
8 2014 to 2020?

9 ATTORNEY JACOBSON:

10 Objection. Form.

11 THE WITNESS: For these  
12 respondents, that's correct.

13 BY ATTORNEY PISTILLI:

14 Q. And then when in-person  
15 teaching resumed post-pandemic, high  
16 school teachers reported 20.2 percent of  
17 their classroom disruptions were due to  
18 social media use?

19 A. That's correct.

20 Q. And 5.5 percent for middle  
21 school teachers?

22 A. Yes.

23 Q. Last school year, '23/'24,  
24 high school teachers reported 20 percent

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1 of their classroom disruptions were due  
2 to social media use?

3 A. Yes.

4 Q. And 5.3 percent for middle  
5 school teachers?

6 A. Yes.

7 Q. So between when in-person  
8 teaching resumed post-pandemic and the  
9 '23/'24 school year, the amount of  
10 classroom disruption time reported by  
11 high school teachers fell, right?

12 ATTORNEY JACOBSON:

13 Objection. Form.

14 THE WITNESS: By .2  
15 percentage points.

16 BY ATTORNEY PISTILLI:

17 Q. And it also fell for middle  
18 school teachers, right?

19 ATTORNEY JACOBSON:

20 Objection. Form.

21 THE WITNESS: By the same .2  
22 percentage points.

23 BY ATTORNEY PISTILLI:

24 Q. And then for the current



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1 year, '24/'25, high school teachers  
2 reported 14.8 percent of their classroom  
3 disruption time was spent dealing with  
4 social media issues?

5 A. Yes.

6 Q. And 5.2 percent for middle  
7 school teachers?

8 A. Yes.

9 Q. So between the '23/'24  
10 school year and the '24/'25 school year,  
11 the amount of time high school teachers  
12 reported spending dealing with social  
13 media issues fell 5.2 percentage points?

14 ATTORNEY JACOBSON:

15 Objection to form.

16 THE WITNESS: That's  
17 correct.

18 BY ATTORNEY PISTILLI:

19 Q. And it also fell for middle  
20 school teachers over that same period?

21 ATTORNEY JACOBSON:

22 Objection to form.

23 THE WITNESS: Yes.

24 BY ATTORNEY PISTILLI:

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1 Q. Let's take a look at  
2 Paragraph 20.

3 Does this indicate to you  
4 that for Tucson, you sent your survey to  
5 a total of 1,077 middle and high school  
6 teachers?

7 A. Yes.

8 But, I mean, to be  
9 completely accurate, you know, what was  
10 sent to them was an invitation to  
11 complete the survey, not the survey  
12 itself.

13 Q. Fair enough.

14 And let's look together at  
15 Page 12.

16 Does this indicate to you  
17 that of all the surveys that you sent out  
18 in Tucson, you only received four  
19 responses to the question relating to  
20 in-class distraction relating to social  
21 media for the 2014 time period?

22 ATTORNEY JACOBSON:

23 Objection. Form.

24 THE WITNESS: No, I think

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1           you're mischaracterizing it.

2                   We had 22 responses from  
3           middle school teachers. And of  
4           those 22, only four were eligible  
5           to be asked that question.

6   BY ATTORNEY PISTILLI:

7           Q.       Right. So there were only  
8           four valid responses, correct?

9                   ATTORNEY JACOBSON:

10          Objection. Form.

11                   THE WITNESS: There were  
12          four responses for that time  
13          period. I certainly believe they  
14          were valid.

15   BY ATTORNEY PISTILLI:

16          Q.       And you sent out a total of  
17          1,077 surveys, correct?

18                   ATTORNEY JACOBSON:

19          Objection. Form.

20                   THE WITNESS: Yes. But  
21          you've got, you know, two  
22          different filters here.

23                   One being response to the  
24          survey itself. And the second

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1           being still employed in the same  
2           school at the same -- ten years  
3           earlier.

4       BY ATTORNEY PISTILLI:

5           Q.       But now turning to high  
6       school teachers, you only had eight  
7       responses to the question relating to a  
8       decade ago, correct?

9           ATTORNEY JACOBSON:

10       Objection to form.

11           THE WITNESS:   Well, we had  
12       eight responses out of the 32 who  
13       were -- there were eight people  
14       who were eligible to be asked the  
15       question out of the 32 that  
16       responded to the survey.

17       BY ATTORNEY PISTILLI:

18           Q.       And so the percentages that  
19       you report for Tucson relating to the  
20       2014 time period were extrapolations  
21       based on only 12 responses, correct?

22           ATTORNEY JACOBSON:

23       Objection.   Form.

24           THE WITNESS:   They weren't

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1           extrapolations. They were --  
2           these were the numbers we  
3           collected and what we reported.

4 BY ATTORNEY PISTILLI:

5           Q.       You collected and reported  
6           them as figures for the Tucson School  
7           District for the 2014 school year, right?

8           A.       Right. Because these were  
9           the only ones who were eligible to be --  
10          to be counted there.

11          Q.       Right. But that figure for  
12          the 2014 school year is based only on 12  
13          responses?

14                   ATTORNEY JACOBSON:

15           Objection. Form.

16                   THE WITNESS: In total,  
17           there were 12 respondents who were  
18           eligible to be asked that  
19           question, yes.

20 BY ATTORNEY PISTILLI:

21          Q.       And then the figures you  
22          report for 2014 were based only on those  
23          12 responses?

24                   ATTORNEY JACOBSON:

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1                   Objection.    Form.

2                               THE WITNESS:   Yes, that's  
3                   correct.

4   BY ATTORNEY PISTILLI:

5                   Q.       Let's take a look for a  
6                   minute at Page 10.

7                   A.       For Tucson?

8                   Q.       Yes.

9                               And then the question you  
10                  asked here, Question 5 -- first, other  
11                  than -- just so we're on the same page,  
12                  other than having the -- strike that.

13                              This is -- you asked  
14                  essentially the same question to each of  
15                  the six school districts, right?

16                  A.       Yes.

17                  Q.       And, then, the question you  
18                  asked had them fill in numbers of  
19                  minutes, right?

20                  A.       That is correct.

21                  Q.       And then how did you go from  
22                  those number of minutes to calculating  
23                  the percentages that you report?

24                  A.       We used the data that we

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1 collected in Questions 1 -- well, really  
2 Question 2. But, In terms of a typical  
3 day, how much of your time is scheduled  
4 instruction time?

5 Q. So the percentages have the  
6 minutes diverted as the numerator and the  
7 total scheduled instruction time as the  
8 denominator, essentially?

9 A. Yes, essentially.

10 Q. Let's take a look at  
11 Paragraph 26.

12 Do you see you say there,  
13 Respondents who indicated they did not  
14 know how many hours and/or minutes they  
15 are at school in a typical day were  
16 skipped to the end and subsequently  
17 removed from the data prior to analysis.

18 Do you see that?

19 A. Yes.

20 Q. And does that accurately  
21 describe your methodology for all six of  
22 the cases?

23 A. Yes.

24 Q. And so if somebody said they

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1 didn't know how many hours or minutes  
2 they worked, then you didn't ask them any  
3 questions about in-class distraction,  
4 correct?

5 A. Yes, that's correct.

6 Q. So no further data was  
7 collected from those individuals?

8 A. That's correct.

9 Q. And you essentially treated  
10 them as if they hadn't responded to the  
11 survey at all?

12 ATTORNEY JACOBSON:

13 Objection. Form.

14 THE WITNESS: I guess that's  
15 the implication, yes.

16 BY ATTORNEY PISTILLI:

17 Q. And so you assumed that they  
18 were representative despite the fact that  
19 they revealed they were different in the  
20 sense that they were unable to recall the  
21 amount of time they spent working, right?

22 ATTORNEY JACOBSON:

23 Objection. Foundation.

24 THE WITNESS: I'm not sure I



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1 agree with that.

2 BY ATTORNEY PISTILLI:

3 Q. We know that they are  
4 different in some way from the people who  
5 you included in your data set, right?

6 ATTORNEY JACOBSON:

7 Objection. Foundation.

8 THE WITNESS: No, I don't  
9 think we know that they're  
10 different. They answered the  
11 question in a way that made it  
12 impossible to continue the survey.

13 So that's all I know. I  
14 mean, I have no reason to believe  
15 that we don't have a  
16 representative sample here.

17 BY ATTORNEY PISTILLI:

18 Q. Well, there -- there were  
19 two categories of people who responded to  
20 your survey, right?

21 There were people who felt  
22 that they could estimate the amount of  
23 time they spent on in-class instruction  
24 and there were people who felt that they

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1       couldn't, correct?

2                       ATTORNEY JACOBSON:

3               Objection.   Compound.

4                       THE WITNESS:   No, that -- I  
5               don't think that's a way to  
6               describe --

7       BY ATTORNEY PISTILLI:

8               Q.       How would you describe it?

9               A.       -- describe them.

10               There were people who  
11       responded to the survey and there were  
12       people who didn't.   And I have no reason  
13       to believe that we don't have a  
14       representative sample of people  
15       responding.

16               Q.       Well, we'll get to people  
17       who didn't respond.

18               But right now I'm asking you  
19       about people who indicated they didn't  
20       know how many hours and/or minutes they  
21       were at school in a typical day.

22               Because there were some  
23       people who said they didn't know how many  
24       hours or minutes they were at school in a

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1 typical day, right?

2 A. Yes. There are some people  
3 who did that.

4 Q. And then there were other  
5 people who felt that they were capable of  
6 answering that question, correct?

7 ATTORNEY JACOBSON:

8 Objection. Form.

9 THE WITNESS: They did  
10 answer the question.

11 BY ATTORNEY PISTILLI:

12 Q. Right. And that's a  
13 difference between those two groups,  
14 right?

15 ATTORNEY JACOBSON:

16 Objection. Form.

17 THE WITNESS: It's just  
18 their response to the  
19 questionnaire was different -- to  
20 the question was different.

21 I mean, I don't know that  
22 that means that they're different  
23 types of people.

24 BY ATTORNEY PISTILLI:

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1 Q. Well, you just don't know,  
2 right?

3 ATTORNEY JACOBSON:

4 Objection. Form.

5 THE WITNESS: I have no  
6 reason to believe that they are  
7 really different types of people.  
8 They just answered the question in  
9 a way that made it illogical to  
10 continue an interview with them.

11 BY ATTORNEY PISTILLI:

12 Q. But you didn't do anything  
13 to test whether they were, in fact,  
14 different types of people, right?

15 ATTORNEY JACOBSON:

16 Objection to form.

17 THE WITNESS: They had  
18 qualified for the survey. And we  
19 got to the point where we asked  
20 how long -- how many hours they  
21 spend in a typical day. And, you  
22 know, they felt they couldn't  
23 answer that question.

24 BY ATTORNEY PISTILLI:

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1 Q. Right. And that makes them  
2 different from the people who felt they  
3 could answer the question?

4 ATTORNEY JACOBSON:

5 Objection. Form. And asked and  
6 answered.

7 THE WITNESS: Well, I mean,  
8 any difference between responses  
9 of any individual are going to --  
10 you know, you could characterize  
11 it that way.

12 So I wouldn't say that  
13 they're different. They just gave  
14 different answers.

15 BY ATTORNEY PISTILLI:

16 Q. Different answers relating  
17 to their ability to recall past events?

18 ATTORNEY JACOBSON:

19 Objection. Form.

20 THE WITNESS: No, not past  
21 events. Current events.

22 BY ATTORNEY PISTILLI:

23 Q. Different in terms of their  
24 ability to confidently give estimates

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1 regarding time spent on tasks.

2 ATTORNEY JACOBSON:

3 Objection to form.

4 THE WITNESS: No. I mean,  
5 the question is, you know, in a  
6 typical day for the current school  
7 year, how many hours and/or  
8 minutes are you at school?

9 And of the -- and we take  
10 the answer to that question and  
11 say, of the, say, five hours  
12 you're at school on a typical day  
13 for the current school year, how  
14 much of that time is scheduled  
15 instruction time, i.e., the total  
16 time that you're scheduled to be  
17 teaching a class.

18 And if they say they don't  
19 know, then we're not going to  
20 continue the survey.

21 BY ATTORNEY PISTILLI:

22 Q. But you -- I understand your  
23 view that you don't think this is likely.

24 But you would agree with me

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1 that if those people were different from  
2 the people who were able to answer that  
3 question in a relevant way, that would  
4 mean that your sample is not  
5 representative?

6 ATTORNEY JACOBSON:

7 Objection. Form.

8 THE WITNESS: Well, I mean,  
9 you know, hypothetically. You  
10 presented a situation that I don't  
11 know that I agree that they're any  
12 different from the people who did  
13 respond, they just answered the  
14 question differently.

15 BY ATTORNEY PISTILLI:

16 Q. Right. But if they were  
17 different, that would call into question  
18 the representativeness of your data?

19 ATTORNEY JACOBSON:

20 Objection. Form. And asked and  
21 answered.

22 THE WITNESS: If they were  
23 different hypothetically, then  
24 under that hypothetical, they

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1 would be different.

2 I mean, I'm -- I mean,  
3 you've -- but I have no reason to  
4 believe that they're any  
5 different.

6 BY ATTORNEY PISTILLI:

7 Q. You didn't perform any  
8 testing to determine whether they're  
9 different, correct?

10 ATTORNEY JACOBSON:

11 Objection. Form.

12 THE WITNESS: I had no  
13 reason to believe that they were  
14 different.

15 BY ATTORNEY PISTILLI:

16 Q. So you just assumed they  
17 were the same?

18 ATTORNEY JACOBSON:

19 Objection. Form.

20 THE WITNESS: We sent the  
21 invitation and reminders and got a  
22 response rate that was not  
23 atypical for an Internet survey  
24 with no incentive.



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1 BY ATTORNEY PISTILLI:

2 Q. That wasn't my question,  
3 sir.

4 You effectively assumed that  
5 individuals who are unable to estimate  
6 the amount of time they spent on in-class  
7 instruction were similarly situated to  
8 the individuals who completed your  
9 survey?

10 ATTORNEY JACOBSON:

11 Objection. Form.

12 THE WITNESS: And I have no  
13 reason to believe they are any  
14 different.

15 ATTORNEY PISTILLI: This is  
16 a natural stopping point. I'm  
17 happy to take, like, a five-minute  
18 break. I'm also happy if you guys  
19 want to do lunch. I defer to you  
20 all. And we can do a short lunch.

21 ATTORNEY JACOBSON: I'm not  
22 positive if food has been  
23 delivered, so that would factor in  
24 a little bit.

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1 ATTORNEY PISTILLI: Can we  
2 go off the record?

3 VIDEO TECHNICIAN: The time  
4 is 11:59 a.m. We are off the  
5 record.

6 - - -

7 (Whereupon, a brief recess  
8 was taken.)

9 - - -

10 VIDEO TECHNICIAN: The time  
11 is 12:13 p.m., and we are on the  
12 record.

13 BY ATTORNEY PISTILLI:

14 Q. If you could continue with  
15 Exhibit-13 and look at Page 12.

16 We've been talking about the  
17 number of people responding to the  
18 a-decade-ago question.

19 And I think you said that  
20 what you're reporting there is the total  
21 number of people eligible to respond; is  
22 that correct?

23 A. Yes, that's what I said.

24 Q. And could you explain what

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1 you mean by "eligible"?

2 A. That they were still  
3 teaching at the same school ten years  
4 earlier.

5 Q. But does it include everyone  
6 who was still teaching at the school ten  
7 years earlier?

8 A. It includes everyone who was  
9 qualified to start the -- and provide an  
10 answer for the current school year.

11 Q. And in order to be qualified  
12 to offer estimates for the current school  
13 year, what criteria applied?

14 A. They had to pass all the  
15 screening questions, the quality control  
16 check, and they needed to know how  
17 many -- how much time they spent at  
18 school in a typical day and how much of  
19 that was instruction time. Essentially,  
20 Questions 1 and 2.

21 Q. Take a look, if you would,  
22 with me, at Appendix E, Page E-1.

23 Now, you say there were 59  
24 completed surveys.

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1 A. Yes.

2 Q. But then you only report 54  
3 data points for that current school year;  
4 is that correct?

5 A. That's correct.

6 Q. And so, then, who are the  
7 other four?

8 A. This was something that we  
9 actually looked into yesterday in  
10 understanding the differences between the  
11 reported numbers and -- the completed  
12 surveys and the number reported in, you  
13 know, Paragraph 40.

14 And I'm trying to recall the  
15 conclusions. And I believe it had to do  
16 with the respondents who answered "don't  
17 know" to the Questions 1 and 2. So they  
18 wouldn't be included in the tables on  
19 Page 12, but they were counted as  
20 completed surveys.

21 Q. So you're saying for Tucson,  
22 four people dropped out of Table 12  
23 because they were unable to recall the  
24 amount of time they had spent working and

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1 the amount of that time that was  
2 instructional?

3 A. That's my remembrance of  
4 looking at these yesterday.

5 Q. And then to maybe save us  
6 all some time and paper shuffling, if we  
7 were to look at all the other reports, if  
8 there was a difference between the number  
9 of people with reported responses for the  
10 current school year and that number of  
11 completed surveys shown in Appendix E, it  
12 would be for that same reason?

13 A. Yes.

14 Q. When -- when you asked  
15 people about the amount of time they  
16 spent providing instruction, you only  
17 asked for the current time period,  
18 correct?

19 A. Correct.

20 Q. So you didn't, for instance,  
21 require someone to remember the amount of  
22 time they spent on in-class instruction  
23 in 2014 prior to answering questions  
24 about diverted time in 2014, correct?

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1           A.       That's correct. But we  
2       were -- you know, it was the same teacher  
3       in the same school. So, you know, their  
4       instruction time would have been, you  
5       know, basically, the same.

6           Q.       So you essentially assumed  
7       that the amount of time teachers spend on  
8       in-class instruction was the same in 2014  
9       as it was when you administered the  
10      survey?

11                   ATTORNEY JACOBSON:

12           Objection. Form. Misstates  
13           testimony.

14                   THE WITNESS: I think we  
15           assumed that it was the same  
16           throughout this -- this time  
17           period.

18           BY ATTORNEY PISTILLI:

19           Q.       Right. So you assumed that  
20       each teacher spent the same amount of  
21       time on in-class instruction for the  
22       entirety of their tenure at the school?

23                   ATTORNEY JACOBSON:

24           Objection. Form.

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1 THE WITNESS: It might -- it  
2 might vary from, you know, one  
3 year to the next.

4 But, again, these were the  
5 same -- same teachers and the  
6 same -- in the same schools.

7 BY ATTORNEY PISTILLI:

8 Q. Right. But that doesn't  
9 mean that the amount of time they spend  
10 on instruction doesn't change over time,  
11 does it?

12 ATTORNEY JACOBSON:

13 Objection. Form.

14 THE WITNESS: It doesn't  
15 necessarily mean that. But I  
16 think it's a fair assumption.

17 BY ATTORNEY PISTILLI:

18 Q. Did you do anything to test  
19 that assumption?

20 A. No, I did not do anything to  
21 test that assumption.

22 Q. Did you look at any data  
23 from the district regarding time spent in  
24 school by teachers?

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1 ATTORNEY JACOBSON:

2 Objection. Form.

3 THE WITNESS: It was my  
4 assumption that, actually,  
5 Dr. Ward would -- had that  
6 information.

7 BY ATTORNEY PISTILLI:

8 Q. But it's not something you  
9 looked at?

10 A. No, it was not something I  
11 looked at.

12 Q. Let's turn to Page 10.

13 A. Are we still on Exhibit-13?

14 Q. Yes.

15 But, again, is -- Page 10,  
16 Exhibit-13, contains the text of  
17 Question 5, correct?

18 A. Correct.

19 Q. And that was the same  
20 question that you asked in all six of the  
21 districts?

22 A. That's correct.

23 Q. And you asked respondents to  
24 estimate how many minutes in a typical



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1 day were diverted away from teaching  
2 during scheduled instruction time due to  
3 student use of social media, right?

4 A. Yeah. Paraphrased, yes.

5 Q. And you asked that of  
6 respondents even if they didn't select  
7 social media as one of the causes of  
8 disruption to their scheduled instruction  
9 time in the current school year, right?

10 A. Yes. If they didn't  
11 identify that as a disruption, it was  
12 coded as a zero.

13 Q. Right. But you,  
14 nonetheless, went and asked them the  
15 question as to other time periods,  
16 correct?

17 ATTORNEY JACOBSON:

18 Objection. Form.

19 THE WITNESS: That's  
20 correct.

21 BY ATTORNEY PISTILLI:

22 Q. And such a follow-up  
23 question could have led the teachers to  
24 reconsider their initial answer, correct?

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1 ATTORNEY JACOBSON:

2 Objection to form.

3 THE WITNESS: Well, they  
4 reconsidered their initial  
5 estimate, they only increased the  
6 amount of time diverted. So I  
7 think it's conservative the way we  
8 treated it.

9 BY ATTORNEY PISTILLI:

10 Q. Well, could they go back and  
11 change their prior answer?

12 A. No.

13 Q. And, then, you didn't ask  
14 any other questions about -- follow-up  
15 questions about time diverted due to  
16 other issues, correct?

17 A. That's correct.

18 But the respondents would  
19 have no way of knowing that they weren't  
20 going to be asked about it.

21 Q. Well, they knew they weren't  
22 asked about it, right?

23 A. Only when the survey ended.

24 Q. But you didn't -- after

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1 asking an initial question about  
2 unauthorized texting, you didn't follow  
3 up on that in your survey at all?

4 ATTORNEY JACOBSON:

5 Objection. Form.

6 THE WITNESS: We didn't  
7 follow it up on the survey. But  
8 the teachers didn't know that we  
9 weren't going to.

10 BY ATTORNEY PISTILLI:

11 Q. You didn't ask questions  
12 about student tardiness?

13 A. Again, the -- we weren't  
14 trying to do a comparative -- comparative  
15 measures. And the teachers didn't know  
16 that was the only thing we were going to  
17 be following up on.

18 Q. But you didn't follow up on  
19 classroom technology failure during  
20 class, right?

21 ATTORNEY JACOBSON:

22 Objection. Asked and answered.

23 THE WITNESS: That wasn't  
24 one of the -- as I said, we only

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1 followed up on the social media  
2 issues. And teachers would have  
3 no way of knowing that those were  
4 the only ones -- that was the only  
5 thing we were going to follow up  
6 on.

7 BY ATTORNEY PISTILLI:

8 Q. You didn't follow up on any  
9 of the items that you asked about in your  
10 threshold question regarding in-class  
11 diversion, correct?

12 ATTORNEY JACOBSON:

13 Objection. Asked and answered.

14 THE WITNESS: The only thing  
15 we followed up on was the social  
16 media issues.

17 BY ATTORNEY PISTILLI:

18 Q. And so you're not able to  
19 say how much time teachers spent being  
20 diverted in class, total, correct?

21 A. That's correct.

22 Q. And so, for instance, you  
23 can't tell me whether time spent on  
24 social media-related diversions have

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1 merely replaced other forms of diversion  
2 in earlier time periods, correct?

3 ATTORNEY JACOBSON:

4 Objection to form.

5 THE WITNESS: We didn't ask  
6 about the other time periods. So  
7 we don't have a comparative  
8 measure.

9 BY ATTORNEY PISTILLI:

10 Q. Well, you asked about other  
11 time periods, correct?

12 A. Other time periods, yes.

13 Q. But you didn't ask about  
14 other forms of diversion during any of  
15 those time periods?

16 A. That's correct.

17 Q. And so it's possible that  
18 any increase in time spent diverted due  
19 to social media issues merely replaced  
20 other forms of in-class distraction  
21 during earlier time periods?

22 ATTORNEY JACOBSON:

23 Objection. Form.

24 THE WITNESS: Well,

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1           hypothetically, you know, maybe  
2           that's possible. But I -- you  
3           know we measured the diversion due  
4           to social media. If that were to  
5           have declined, it doesn't mean  
6           that others would have increased.

7       BY ATTORNEY PISTILLI:

8           Q.       Well, the point is, you  
9           don't know if total time spent on  
10          in-class diversions went down, went up or  
11          stayed the same during your survey  
12          period?

13          A.       Right. We asked about  
14          social media-related issues only.

15          Q.       Let's go back to Page 9.  
16                    And this is Question 3,  
17          correct?

18          A.       Page 9?

19          Q.       Page 8 of this one.

20          A.       Yes.

21          Q.       So on Page 8, Question 3,  
22          this is the question that you asked for  
23          each of the six districts, correct?

24          A.       Yes.

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1 Q. And would you agree to me --  
2 with me that there are two separate  
3 questions that you asked relating to  
4 social media?

5 A. Yes.

6 Q. And there's no other  
7 category of potential in-class  
8 distraction that is listed twice here,  
9 correct?

10 A. I think that's correct.

11 Q. And isn't it possible that a  
12 person looking at this survey might find  
13 it significant that you asked two social  
14 media-related questions whereas every  
15 other category is only asked once?

16 ATTORNEY JACOBSON:

17 Objection. Form.

18 THE WITNESS: Well, these  
19 items are presented in randomized  
20 order. I mean, for our  
21 convenience, we put the social  
22 media ones right up at the top, in  
23 terms of just, you know, coding  
24 and so on. But every teacher sees

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1           it in a different order.

2                   And so, you know, whether  
3           they see -- see them separated by  
4           seven other items or next to each  
5           other, you know, it doesn't, you  
6           know -- they're not necessarily  
7           going to say, oh, wow, this must  
8           be about social media.

9                   But even if it is, this only  
10          takes them, then, to the next  
11          question which has to do with,  
12          okay, so how much time was  
13          diverted due to social media?

14       BY ATTORNEY PISTILLI:

15               Q.       Well, I understand that they  
16       don't necessarily appear in this order.

17                   But you agree with me, don't  
18       you, that there are two social  
19       media-related questions here, correct?

20               A.       Yes.

21               Q.       And no other category of  
22       possible in-class distraction is listed  
23       twice, correct?

24               A.       That's correct.



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1 Q. And do you agree with me  
2 that someone responding to this survey  
3 could find that significant?

4 A. No, I don't think I agree  
5 with that.

6 Q. So no one would have a  
7 reason to wonder whether this survey was,  
8 in fact, about social media where it  
9 alone, among all of the possible options,  
10 is listed twice?

11 ATTORNEY JACOBSON:

12 Objection. Form.

13 THE WITNESS: No. I think  
14 that, you know, even if they do  
15 notice that it's listed twice,  
16 they're immediately taken to the  
17 question that asks about time  
18 spent on social media and they  
19 could, then, think, okay, and next  
20 I'm going to be asked about this  
21 and next I'm going to be asked  
22 about something else.

23 BY ATTORNEY PISTILLI:

24 Q. But it's a cue that this is

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1 a survey focused on social media,  
2 correct?

3 ATTORNEY JACOBSON:

4 Objection. Form.

5 THE WITNESS: No, I don't  
6 believe so.

7 I mean, yes, I -- you're  
8 certainly correct that they're  
9 mentioned twice. But it's  
10 certainly in different contexts.

11 One has to do with use and  
12 activities in classroom, others  
13 have activities outside the  
14 classroom. I mean, if we -- you  
15 know, someone could just as easily  
16 assume that what we're talking  
17 about is how in-classroom  
18 distractions in total manifest  
19 themselves in terms of diverted  
20 time or outside the classroom.

21 I mean, you've got all sorts  
22 of stuff here.

23 BY ATTORNEY PISTILLI:

24 Q. Right. But it's your expert

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1 opinion that you're not in any way  
2 tipping people off that this is a social  
3 media survey when you include it, and  
4 only it, twice?

5 That's your expert opinion  
6 for the jury?

7 ATTORNEY JACOBSON:

8 Objection. Form.

9 THE WITNESS: Yes. I don't  
10 see that as -- as biassing in any  
11 way.

12 BY ATTORNEY PISTILLI:

13 Q. You're aware, aren't you,  
14 that each of these school districts have  
15 brought lawsuits involving social media,  
16 correct?

17 A. Yes.

18 Q. And you're aware that those  
19 lawsuits are public?

20 A. I was unaware of these  
21 lawsuits prior to being contacted for  
22 this case. So I'm not sure what to say  
23 about how public the knowledge is.

24 Q. Well, are you aware that

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1 each of these districts trumpeted the  
2 filing of the lawsuits and press?

3 ATTORNEY JACOBSON:

4 Objection. Form.

5 THE WITNESS: I haven't seen  
6 any press coverage of these  
7 lawsuits.

8 BY ATTORNEY PISTILLI:

9 Q. It's not something you  
10 looked at?

11 A. Not something I was aware  
12 of.

13 Q. And are you aware that  
14 school district personnel have been  
15 involved in discovery in these lawsuits?

16 A. I've been informed of that,  
17 yes.

18 Q. And did you even consider  
19 the possibility that the teachers to whom  
20 you sent this survey were, in fact, well  
21 aware of the fact that their employer had  
22 brought these social media lawsuits?

23 ATTORNEY JACOBSON:

24 Objection. Form.

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1 THE WITNESS: I don't have  
2 any knowledge of what the teachers  
3 are aware of in terms of the  
4 lawsuits.

5 BY ATTORNEY PISTILLI:

6 Q. That's not something you  
7 considered when you were crafting your  
8 survey, correct?

9 A. You're carefully, I think,  
10 crafting the survey to, you know, make  
11 sure that we had a -- didn't have any  
12 leading questions and didn't motivate a  
13 response by people who had a particular  
14 axe to grind or anything like that.

15 Q. But you didn't do anything  
16 to rule out the possibility that some of  
17 the people who received your survey knew  
18 about this lawsuit?

19 ATTORNEY JACOBSON:

20 Objection. Form.

21 THE WITNESS: I mean, it's  
22 possible that they may have known  
23 about the lawsuit. But whether  
24 they connected the survey to that

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1 or not, until we get to the -- you  
2 know, the key questions about time  
3 diverted, it certainly wouldn't  
4 disqualify them from the survey.

5 BY ATTORNEY PISTILLI:

6 Q. Well, when we get to the key  
7 question about time diverted, isn't it  
8 possible that a teacher would connect the  
9 survey to the litigation?

10 ATTORNEY JACOBSON:

11 Objection. Form.

12 THE WITNESS: I mean,  
13 hypothetically, I guess that's  
14 possible.

15 BY ATTORNEY PISTILLI:

16 Q. And you didn't ask any  
17 questions, for instance, about teachers'  
18 awareness of the litigation?

19 A. No. The questions that we  
20 asked are identified here.

21 Q. And would you agree that if  
22 a teacher connected this survey to the  
23 litigation, that could impact the way  
24 that they responded to the questions

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1 about time diverted?

2 A. I have no reason to think  
3 that there was any influence based on  
4 knowledge of a -- of a lawsuit.

5 Q. But you didn't do any  
6 testing to rule that possibility out?

7 A. As I said, I had no reason  
8 to believe that there would be a problem.

9 Q. But sitting here today, you  
10 don't know whether the individuals who  
11 filled out this survey were aware of the  
12 litigation or took the litigation into  
13 account when answering your questions,  
14 right?

15 ATTORNEY JACOBSON:

16 Objection. Asked and answered.

17 THE WITNESS: I think we  
18 got -- I think people answered the  
19 questions honestly and to the best  
20 of their ability. The -- yeah.

21 BY ATTORNEY PISTILLI:

22 Q. So it's your expert  
23 testimony that if a survey recipient  
24 understands that a survey is related to

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1 litigation and understands that they can  
2 help their school out by responding in a  
3 certain way there's no potential that  
4 they did so?

5 ATTORNEY JACOBSON:

6 Objection. Form.

7 THE WITNESS: Well, I don't  
8 think there's necessarily a right  
9 or wrong answer to this question  
10 about, you know, time diverted.

11 BY ATTORNEY PISTILLI:

12 Q. You don't think that --

13 ATTORNEY JACOBSON: The  
14 witness was still speaking. So I  
15 would ask that you please let him  
16 finish his testimony before asking  
17 another question.

18 BY ATTORNEY PISTILLI:

19 Q. Were you still speaking?

20 A. I think so. But go ahead.

21 ATTORNEY JACOBSON: It's  
22 happened a few times now. So I  
23 would just be cognizant, as you  
24 asked at the beginning of the



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1 deposition that both of you make  
2 sure the other is done speaking.

3 BY ATTORNEY PISTILLI:

4 Q. My question is not whether  
5 there's a right-or-wrong answer.

6 My question is, if someone  
7 knows about the lawsuit, isn't it  
8 possible that they will understand that  
9 saying they spent more time diverted to  
10 social media would be helpful to the  
11 lawsuit?

12 ATTORNEY JACOBSON:

13 Objection. Form.

14 THE WITNESS: I really don't  
15 know what they would -- what they  
16 would think under that  
17 hypothetical situation.

18 BY ATTORNEY PISTILLI:

19 Q. But it's not anything that  
20 you tried to test for?

21 A. That's right. There's no  
22 mention of the lawsuit in this survey.

23 Q. You also didn't ask teachers  
24 any questions designed to test their

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1 ability to recall events going, in some  
2 cases, back more than a decade, correct?

3 ATTORNEY JACOBSON:

4 Objection. Form.

5 THE WITNESS: Well, we did  
6 pre-testing of the survey in  
7 which, you know, it was clear that  
8 teachers were able to  
9 appropriately provide answers for  
10 both the current year as well as  
11 looking back over sometimes as  
12 much as a decade.

13 The survey was carefully  
14 designed to provide kind of  
15 guardrails or use the current time  
16 diverted estimate as a way of them  
17 being able to say, is it more or  
18 less now than it was then and how  
19 much more or less, so that they  
20 essentially were able to give us  
21 the pattern of time diverted  
22 over -- over these time periods.

23 And as you point out, I  
24 mean, the numbers went down

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1 over -- in a number of cases,  
2 which would certainly indicate  
3 that, you know, they weren't  
4 biassing their responses to help  
5 the school district.

6 BY ATTORNEY PISTILLI:

7 Q. Let's talk a little bit  
8 about the pre-testing.

9 Can you describe generally  
10 what you did to pre-test the survey?

11 A. So we recruited teachers in  
12 a variety of both middle and high school,  
13 teaching a variety of grades and  
14 subjects. And these were teachers who  
15 were not in any of the 12 original  
16 districts.

17 They were invited to  
18 participate in the -- in this interview  
19 process. They were sent a link to the  
20 program survey.

21 And we spoke -- spoke to  
22 them by phone as they were taking the  
23 survey in what I term a ride-along kind  
24 of situation. Where, as they answer each

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1 question, they explained the thinking and  
2 the thought process about that -- about  
3 that question and how they arrived at  
4 their answer.

5 Q. How many individual teachers  
6 were involved in the pre-testing?

7 A. Twenty-three.

8 Q. And, then, did your staff  
9 who were on the phone with those teachers  
10 have a script that they used?

11 A. Well, we had the survey.  
12 And so at each point it was asking -- you  
13 know, asking them, you know, so where did  
14 that -- how did you reach that  
15 conclusion? Why did you answer it that  
16 way?

17 Q. Right. But were they  
18 provided with a list of questions that  
19 they should ask to follow up on for each  
20 question?

21 A. No. Just the general, you  
22 know, how did you reach that conclusion,  
23 how did you reach -- you know, and it was  
24 trying to keep it conversational.

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1 Q. And were they -- the  
2 pre-tests recorded?

3 A. No.

4 Q. Were there any memos  
5 prepared that memorialized the calls  
6 after they happened?

7 A. Not beyond just having the  
8 schedule of calls. I was briefed after  
9 the calls, and I listened to at least a  
10 half a dozen of them myself.

11 Q. And what, if any, questions  
12 were asked to probe the ability of  
13 teachers to recall down to the minute  
14 time spent relating to social media  
15 diversion up to a decade ago?

16 ATTORNEY JACOBSON:

17 Objection. Form.

18 THE WITNESS: In each case,  
19 you know, as they answered the  
20 question, we would ask them to  
21 explain, you know, how did you  
22 reach that conclusion, how did you  
23 arrive at that?

24 And what we heard was that,

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1           you know, they were looking and  
2           thinking about, okay, so was, you  
3           know, a year ago more or less than  
4           it is now and how much more or  
5           less and then going back and back  
6           and back.

7       BY ATTORNEY PISTILLI:

8           Q.       Did you ask them whether  
9           they felt confident in their ability to  
10          recall the amount of time spent on  
11          in-class disruption down to the minute?

12          A.       They -- you know, my  
13          perception, in listening to the  
14          interviews, was that they were very  
15          comfortable making those -- those  
16          estimates.

17          Q.       But did you actually ask  
18          them the question?

19          A.       No, I don't believe we did.

20          Q.       Did you ask them any other  
21          questions that were designed to probe the  
22          accuracy of their recall over a  
23          significant number of years?

24                   ATTORNEY JACOBSON:

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1           Objection.    Form.

2                   THE WITNESS:   Well -- and to  
3           the extent that we were asking  
4           them to explain their thought  
5           process and how they reached a  
6           particular -- reached a particular  
7           answer, we felt that was -- that  
8           was the appropriate way to gauge  
9           their comfort in making those  
10          estimates.

11   BY ATTORNEY PISTILLI:

12           Q.       Did you make any changes to  
13   the survey as a result of the pre-test?

14           A.       The -- I don't recall any  
15   specific or significant changes.  There  
16   might have been some wording changes.

17                   But, you know, I was very  
18   comfortable that we were able to get  
19   accurate and well-thought-out answers to  
20   the questions.

21           Q.       But you didn't do anything  
22   to try to objectively verify their  
23   ability to recall, down to the minute,  
24   events over a significant number of

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1 years, correct?

2 ATTORNEY JACOBSON:

3 Objection. Form.

4 THE WITNESS: Well, again,  
5 the process of kind of asking  
6 about the current time period and  
7 then time periods prior to that  
8 gives a -- kind of these -- what I  
9 was terming as guardrails around  
10 their answer.

11 And so the thought process  
12 was, is it more or is it less, how  
13 much more, how much less was what  
14 was -- was what I was hearing in  
15 the interviews.

16 BY ATTORNEY PISTILLI:

17 Q. Well, my question was a  
18 little bit different.

19 It's about whether you did  
20 anything to objectively verify their  
21 ability to accurately recall, down to the  
22 minute, events over a significant period  
23 of years?

24 ATTORNEY JACOBSON:



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1           Objection.    Form.

2                   THE WITNESS:   We didn't have  
3           any -- any questions to do that.  
4           And I have no reason to believe  
5           that they weren't accurate  
6           estimates.

7   BY ATTORNEY PISTILLI:

8           Q.       But it's not something you  
9           tested?

10          A.       Yeah, I'm not sure what sort  
11       of test you're thinking about.

12          Q.       But you agree with me you  
13       didn't test it?

14                   ATTORNEY JACOBSON:

15       Objection.    Form.  
16       Mischaracterizes testimony.

17                   THE WITNESS:   Well, I mean,  
18       as I said, in the pre-test, you  
19       know, we heard people were very  
20       comfortable with making these  
21       estimates and responding to the  
22       questions as we -- as we drew them  
23       up.

24   BY ATTORNEY PISTILLI:

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1 Q. Right. But my question is  
2 about the pre-test and whether, during  
3 the course of the pre-test, you did  
4 anything to objectively verify their  
5 ability to perform these  
6 down-to-the-minute recollections over a  
7 significant period of time.

8 ATTORNEY JACOBSON:

9 Objection. Form.

10 THE WITNESS: Well, what we  
11 did was, they took the survey and  
12 as they answered the questions,  
13 they explained the thought  
14 process.

15 And I felt that was the  
16 appropriate way to conduct the  
17 pre-test.

18 BY ATTORNEY PISTILLI:

19 Q. You would agree with me that  
20 that's not any form of objective  
21 verification?

22 ATTORNEY JACOBSON:

23 Objection. Form.

24 THE WITNESS: The -- it

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1           wasn't an attempt to verify their  
2           responses. We accepted their  
3           responses because they sounded,  
4           you know, appropriately well  
5           reasoned.

6       BY ATTORNEY PISTILLI:

7           Q.       And turning back to the  
8           survey itself, you didn't ask teachers  
9           any follow-up questions to ascertain  
10          their ability to reliably recall, down to  
11          the minute, events over a significant  
12          time period, right?

13                 ATTORNEY JACOBSON:

14                 Objection to form.

15                 THE WITNESS: You know, if  
16                 they didn't recall or didn't  
17                 remember, there was a clear option  
18                 of checking "don't know."

19                 And so to the extent that  
20                 they did that, you know, we didn't  
21                 include that as -- as their  
22                 response there.

23       BY ATTORNEY PISTILLI:

24           Q.       But my question is about

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1 what, if anything, you did to verify the  
2 accuracy of reports of people who, for  
3 whatever reason, chose to answer the  
4 question?

5 ATTORNEY JACOBSON:

6 Objection. Form.

7 THE WITNESS: Yeah, I'm not  
8 sure what you're suggesting should  
9 have been done.

10 The -- as I said, the  
11 description of the thought process  
12 sounded, to me and in my  
13 experience, as being, you know,  
14 appropriate for the question.

15 And they had plenty of  
16 opportunity to say they don't know  
17 or no minutes were diverted.

18 BY ATTORNEY PISTILLI:

19 Q. You didn't ask them any  
20 objectively verifiable facts to test  
21 their memory, right?

22 ATTORNEY JACOBSON:

23 Objection. Form.

24 THE WITNESS: We didn't --

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1           it wasn't a -- there wasn't a  
2           separate memory -- memory test.

3       BY ATTORNEY PISTILLI:

4           Q.       Would you agree with me that  
5       the longer time passes, the more  
6       challenging it is for a person to recall  
7       events accurately?

8           A.       I think it depends on what  
9       the event is and how you characterize it  
10      to them.

11                    I think -- you know, for  
12      example, I think everyone can probably  
13      know where they were on 9/11, of a  
14      certain age, I guess. But that doesn't  
15      mean I can ask them what they had for  
16      dinner that night.

17           Q.       Right. And you couldn't ask  
18      them how many minutes they spent grocery  
19      shopping on 9/11?

20           A.       I could probably ask them if  
21      they went grocery shopping on 9/11. I  
22      mean, it depends on what the question is  
23      and the context that you're asking it.

24           Q.       Right. So even if with a

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1 salient anchor like 9/11, it wouldn't be  
2 reason to believe for people to remember  
3 down to the minute the tasks they spent  
4 time on that day?

5 ATTORNEY JACOBSON:

6 Objection. Form.

7 THE WITNESS: I think it  
8 depends on what the task is.

9 BY ATTORNEY PISTILLI:

10 Q. If you asked them how many  
11 minutes they spent on the phone that day?

12 A. I mean, that's an  
13 interesting -- you know -- but I could  
14 probably ask them how much time they  
15 spent watching television that day.

16 I mean, it's -- you know,  
17 it's one of those it depends.

18 ATTORNEY PISTILLI: Let's  
19 take a look at Tab 39.

20 - - -

21 (Whereupon, Exhibit  
22 Klein-14, No Bates, Teachers'  
23 Working Time From Time-Use Data:  
24 Consequences of the Invalidity of

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1 Survey Questions For Teachers,  
2 Researchers, and Policy, was  
3 marked for identification.)

4 - - -

5 BY ATTORNEY PISTILLI:

6 Q. In the course of preparing  
7 your report or rebuttal report, did you  
8 look at this article?

9 A. I don't believe so.

10 Q. Are you aware that this was  
11 cited by Stern in his report?

12 A. I believe I remember that.

13 Q. And this is a research paper  
14 entitled, Teachers' Working Time From  
15 Time Use Data: Consequences of the  
16 Invalidity of Survey Questions for  
17 Teachers, Researchers and Policy.

18 Do you see that?

19 A. I see the title, yes.

20 Q. And this was published in  
21 Teaching and Teacher Education in 2022?

22 A. It looks like the copyright  
23 is 2021. But I don't know.

24 Q. I'm just looking at the --

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1           A.       It says -- the heading  
2       says -- yeah, I'm not sure why the  
3       copyright would be different, but.

4           Q.       And did you, in either of  
5       your reports, cite any literature  
6       addressing the ability of teachers to  
7       recall time spent on discrete tasks over  
8       significant periods of time?

9           A.       I think I did in looking at  
10      the -- one of -- one of his footnotes  
11      that talked about tying estimates to  
12      important dates, which is exactly what we  
13      did.

14          Q.       You're referring to the  
15      event calendar study?

16          A.       Yes.

17          Q.       Okay. We'll get to that.

18                  But nothing that you cited,  
19      including what you just referred to, was  
20      an academic article discussing the  
21      ability of teachers to recall time spent  
22      over significant periods, correct?

23                  ATTORNEY JACOBSON:

24                  Objection to form.



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1 THE WITNESS: I'm sorry, I  
2 didn't understand the question.

3 BY ATTORNEY PISTILLI:

4 Q. Sure.

5 This is an article  
6 specifically about the ability of  
7 teachers to recall time spent on tasks at  
8 work over significant periods of time,  
9 correct?

10 ATTORNEY JACOBSON:

11 Objection. Form.

12 THE WITNESS: I haven't  
13 really read this article, so --

14 BY ATTORNEY PISTILLI:

15 Q. Did you read it after you  
16 got the Stern report?

17 A. No.

18 Q. Did you cite any articles  
19 specifically addressing the question of  
20 teacher recall over significant periods  
21 of time?

22 ATTORNEY JACOBSON:

23 Objection. Form.

24 THE WITNESS: No, I don't

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1 believe so.

2 Or we can look at my  
3 rebuttal report and see. But I  
4 don't recall that.

5 BY ATTORNEY PISTILLI:

6 Q. So if we look together at  
7 Page 2, Section 2.2.

8 And this academic article  
9 reports that, The difficulties that  
10 teachers face when estimating their  
11 working hours in questionnaires can  
12 result in systematic error related to the  
13 validity of the measuring instrument.

14 Do you disagree with the  
15 sociology professor who wrote this  
16 article?

17 ATTORNEY JACOBSON:

18 Objection. Form.

19 THE WITNESS: I would need  
20 to read the article in more detail  
21 to understand what they're asking  
22 teachers to estimate.

23 BY ATTORNEY PISTILLI:

24 Q. Take your time.

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1           A.       You really want me to read  
2       the whole article?

3           Q.       Well, I want you to answer  
4       my question whether or not you disagree  
5       with the academic literature indicating  
6       that teachers face difficulties when  
7       estimating their working hours in  
8       questionnaires that can lead to  
9       systematic error?

10                   ATTORNEY JACOBSON:   And the  
11       witness has testified that he  
12       hadn't read this article before  
13       and would need to to understand  
14       the article in its entirety to  
15       answer that question.

16                   THE WITNESS:   This seems to  
17       be addressing the issue of total  
18       working time as opposed to  
19       specific elements of --

20       BY ATTORNEY PISTILLI:

21           Q.       Well, in the first instance,  
22       would you agree with me that it's easier  
23       to estimate total work time than to  
24       estimate subcomponents?

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1 ATTORNEY JACOBSON:

2 Objection. Form.

3 THE WITNESS: I don't  
4 necessarily agree with that.

5 BY ATTORNEY PISTILLI:

6 Q. So you think it's easier to  
7 tell me each of the specific tasks you  
8 did in a workday than to tell me how long  
9 your workday was?

10 ATTORNEY JACOBSON:

11 Objection. Mischaracterizes  
12 testimony.

13 THE WITNESS: I think it  
14 depends on what the task is and  
15 how the question is asked.

16 ATTORNEY JACOBSON: We're  
17 coming up on an hour pretty soon,  
18 and I've been told lunch has been  
19 delivered.

20 ATTORNEY PISTILLI: Sure.  
21 We can stop now. That's fine.

22 VIDEO TECHNICIAN: The time  
23 is 1:06 p.m., and we are off the  
24 record.

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1                                   -   -   -

2                                   (Whereupon, a brief recess  
3                                   was taken.)

4                                   -   -   -

5                                   VIDEO TECHNICIAN: The time  
6                                   is 1:44 p.m., and we are on the  
7                                   record.

8                                   BY ATTORNEY PISTILLI:

9                                   Q.        So before the break,  
10                                  Mr. Klein, we were looking at Exhibit-14,  
11                                  which is the research paper titled,  
12                                  Teachers' Working Time From Time Use  
13                                  Data: Consequences of the Invalidity of  
14                                  Survey Questions for Teachers,  
15                                  Researchers and Policy.

16                                  Do you recall that?

17                                  A.        Yes.

18                                  Q.        The lead author of that  
19                                  article is Petrus te Braak?

20                                  A.        Yes.

21                                  Q.        He's a sociology professor?

22                                  A.        I didn't look at his  
23                                  credentials, but --

24                                  Q.        And I believe you suggested

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1 before the break you thought that this  
2 article concerned estimates of total work  
3 time?

4 A. I don't remember what I  
5 said.

6 Q. Let me direct your attention  
7 to Page 8 and Section 4.3.

8 Do you see that's titled,  
9 Working Hours Per Subactivity?

10 A. Yes.

11 Q. You say, In Step 3, we  
12 examined differences in the average  
13 working time per subactivity.

14 Do you see that?

15 A. Yes.

16 Q. And then if you look back on  
17 Page 6, in Table 2, it lists the six  
18 subactivities that they asked teachers  
19 about?

20 A. Yes.

21 Q. And so do you understand now  
22 that part of what this article talks  
23 about is the ability of teachers to  
24 recall the amount of time spent on

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1 discrete tasks during the school day?

2 ATTORNEY JACOBSON: And I  
3 would just note that earlier the  
4 witness had testified that he  
5 would need to read the entire  
6 document to --

7 ATTORNEY PISTILLI: I gave  
8 him the opportunity to read for as  
9 long as he wanted.

10 ATTORNEY JACOBSON: Correct.  
11 And that was still going on before  
12 the break.

13 BY ATTORNEY PISTILLI:

14 Q. Do you need to --

15 A. Well, I do know note that  
16 these subactivities mention social media  
17 or dealing with classroom interruptions.

18 Q. This is an article about the  
19 ability of teachers to recall  
20 subactivities during the workday,  
21 correct?

22 A. Yes.

23 But it also, as I recall  
24 when I -- when I looked at it, it was --

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1 labeled the surveys as being the current  
2 standard for how you go about doing --  
3 here, measuring the work times has become  
4 standard practice in teachers'  
5 questionnaires.

6 So I don't know whether  
7 diaries are more or less accurate. This  
8 says they give different results. But I  
9 don't know if they would give different  
10 results if the subactivity was dealing  
11 with interruptions due to social media.

12 Q. Do you see on Page 2 it  
13 says, The difficulties that teachers face  
14 when estimating their working hours in  
15 questionnaires can result in systemic  
16 error related to the validity of the  
17 measuring instrument.

18 Do you have any basis to  
19 dispute that statement?

20 ATTORNEY JACOBSON:

21 Objection. Form.

22 THE WITNESS: It says that  
23 it can result. It doesn't say  
24 does result. And it says that



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1           the -- it is often assumed that  
2           the related error is random and  
3           would, therefore, have no effect  
4           on the results.

5                       So I don't know whether -- I  
6           don't think this says anything  
7           about social media.

8   BY ATTORNEY PISTILLI:

9           Q.       I'm not asking you about  
10          social media.

11                    I'm asking you questions  
12          about the ability of teachers to  
13          accurately report the amount of time  
14          spent on events in the past.

15           A.       And I think what I -- what  
16          I've said has been that in the pre-test  
17          interviews, it sounded like the teachers  
18          were, you know, perfectly able to  
19          estimate the amount of classroom  
20          disruption time they had to deal with due  
21          to social media issues.

22           Q.       I'm asking -- let me ask you  
23          this: Do you have any literature you can  
24          cite that would support the proposition

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1 that teachers are capable of recalling,  
2 down to the minute, time spent on issues  
3 relating to social media?

4 A. I can't quote a study that  
5 would match up with each one of those  
6 elements of your -- your question.

7 But the -- you know, as I  
8 note here, the, you know, teacher working  
9 time estimates are typically --  
10 traditionally measured by interviews or  
11 questionnaires, okay.

12 I mean, so we did it the way  
13 it's typically done.

14 Q. And did you -- take a look  
15 with me at Page 13.

16 Do you see where it says,  
17 Recent research has raised concerns about  
18 the accuracy of teachers' working time  
19 through traditional questionnaires. Our  
20 study demonstrates that these concerns  
21 are indeed justified.

22 Do you have any basis to  
23 dispute that statement, sir?

24 A. Having not read this entire

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1 article or really seen it before, no, I  
2 can't -- I'm not qualified to dispute  
3 that.

4 Q. Well, again, I'd invite you  
5 to take as much time as you need to look  
6 at the article.

7 After you've done that,  
8 please let me know if you have any basis  
9 to dispute the conclusions of this  
10 academic literature.

11 A. Well, again, this academic  
12 literature doesn't have anything to do  
13 with social media.

14 But -- and, you know, I  
15 don't think I'm qualified to dispute the  
16 results in a -- in a field that I'm not  
17 an expert in.

18 Q. And that field we're talking  
19 about here is sociology?

20 A. I suppose.

21 Q. And what the sociologists  
22 are doing is measuring the amount of time  
23 that teachers spend on tasks, right?

24 ATTORNEY JACOBSON:

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1           Objection to form.

2                   THE WITNESS:   Okay.   So let  
3           me -- let me do some reading here.

4                   Well, I think the, you know,  
5           the -- when you look at the  
6           activity list used for the time  
7           diary, there's nothing in here  
8           that deals with dealing with  
9           disruptions in classrooms due to  
10          anything, much less due to social  
11          media.

12                   And I don't understand the  
13          claim of a diary being more  
14          accurate than -- than a  
15          questionnaire.   A questionnaire  
16          is, as it notes, the typical and  
17          traditional way of measuring  
18          teacher time.

19                   So, you know, I guess this  
20          is -- you know, falls into the  
21          interesting if true category.

22          BY ATTORNEY PISTILLI:

23                   Q.       So my question was, do you  
24          agree with the conclusion of this

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1 academic research paper that, Recent  
2 research has raised concerns about the  
3 accuracy of teachers' working time  
4 through traditional questionnaires. Our  
5 study demonstrates that these concerns  
6 are, indeed, justified.

7 A. I have no reason to agree or  
8 disagree with that.

9 Q. And you can't cite me any  
10 literature that reaches a different  
11 conclusion, can you?

12 A. No, I cannot.

13 Q. And then do you see this  
14 academic researcher also concludes that  
15 questionnaires gauging teachers' working  
16 hours are prone to a number of  
17 measurement errors?

18 Do you see that?

19 A. That's in, what, 2.2?

20 Q. 6.

21 A. 2.6?

22 Q. No, 6. Right after the  
23 second sentence of the conclusion.

24 Questionnaires gauging

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1 teachers' working hours are prone to a  
2 number of measurement errors when  
3 stratifying by teachers' profiles or the  
4 various work-related activities.

5 Do you see that?

6 A. Yes, I see that.

7 Q. And do you have any basis to  
8 dispute that statement?

9 A. I don't have any basis to  
10 support that statement.

11 I do note that this is a  
12 study that was done in Belgium, which,  
13 you know, may be very different than the  
14 U.S.

15 Q. Are you aware of any  
16 literature that calls into question the  
17 validity of these authors' conclusion?

18 ATTORNEY JACOBSON:

19 Objection. Form.

20 THE WITNESS: I don't have  
21 any basis for either accepting or  
22 disputing these.

23 BY ATTORNEY PISTILLI:

24 Q. And are you aware of any

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1 literature supporting the proposition  
2 that there are differences between the  
3 ability of teachers in Belgium and the  
4 United States to recollect issues?

5 A. No. But, again, this has  
6 nothing to do with social media.

7 VIDEO TECHNICIAN: Can we go  
8 off the record?

9 ATTORNEY PISTILLI: Yes.  
10 Can we go off the record?

11 VIDEO TECHNICIAN: The time  
12 is 2:02 p.m. We are going off the  
13 record.

14 - - -

15 (Whereupon, a brief recess  
16 was taken.)

17 - - -

18 VIDEO TECHNICIAN: The time  
19 is 2:11 p.m., and we are on the  
20 record.

21 BY ATTORNEY PISTILLI:

22 Q. Do you -- continuing with  
23 Exhibit-14, could you turn to Page 9,  
24 please?

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1 A. Okay.

2 Q. Do you see Section 5,  
3 Discussion, second paragraph, it says,  
4 Given the complexity of teachers' work,  
5 classic questionnaire methodologies are  
6 prone to a number of measurement errors  
7 when estimating teachers' working time.

8 Do you see that?

9 A. Yes.

10 Q. And you see it then cites a  
11 couple academic articles for that  
12 proposition?

13 A. I see the citations, yes.

14 Q. And so sitting here today,  
15 do you have any basis to dispute the  
16 conclusion that, given the complexity of  
17 teachers' work, classic questionnaire  
18 methodologies are prone to a number of  
19 measurement errors when estimating  
20 teachers' working time?

21 A. I don't have any basis for  
22 disputing or supporting that.

23 Q. Are you aware of any  
24 literature calling that conclusion into



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1 question?

2 A. No, I'm not aware of any  
3 literature calling that into question.

4 I don't -- I don't  
5 understand why the complexity of their  
6 work would make classic questionnaire  
7 methodologies more prone to measurement  
8 error than a diary would be, but.

9 Q. Well, look with me, if you  
10 would, at Page 2.

11 Do you see where it says,  
12 Collecting data on the working time of  
13 teachers on a regular basis is  
14 challenging, as the teaching profession  
15 consists of a number of complex tasks  
16 that take place in different contexts.

17 Do you see that?

18 A. No.

19 Q. The top of Page 2, first  
20 full paragraph.

21 A. Okay.

22 So this is looking at the  
23 total work time, not the specific number  
24 of minutes that are taken up by social

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1 media disruptions.

2 Q. Well, my -- my question is  
3 whether you have any basis to dispute the  
4 statement that, Collecting data on the  
5 working time of teachers on a regular  
6 basis is challenging, as the teaching  
7 profession consists of a number of  
8 complex tasks that take place in  
9 different contexts?

10 A. And the question is do I  
11 have any -- I'm sorry?

12 Q. Do you have any basis to  
13 dispute that statement?

14 A. I don't have any basis for,  
15 you know, supporting that statement  
16 either.

17 I mean, it seems to be  
18 drawing the conclusion that because it  
19 consists of a number of complex tasks  
20 that take place in different contexts,  
21 that collecting data is difficult. I  
22 mean, maybe that is true.

23 But I don't see what that  
24 has to do with social media and

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1 disruptions in the classroom.

2 Q. Well, but it has to do with  
3 the measurement of teacher work time,  
4 right?

5 A. Total time, yes.

6 ATTORNEY JACOBSON: Object  
7 to the form.

8 BY ATTORNEY PISTILLI:

9 Q. Take a look with me, if you  
10 would, further on in the second column of  
11 Page 2.

12 Do you see the paragraph  
13 toward the middle that starts, Teachers'  
14 working time?

15 A. Yes.

16 Q. And then do you see it cites  
17 the Chenu article for the proposition  
18 that, Compared to other occupational  
19 sectors, it is particularly difficult for  
20 teachers to assess working time through  
21 such methods, by which it means  
22 traditional interviews or questionnaires?

23 A. Yes, I see that.

24 Q. And do you have any basis to

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1 dispute that statement?

2 A. I haven't seen the Chenu  
3 article, so I'm not sure. I don't have a  
4 basis for saying anything one way or the  
5 other. I don't have an opinion on it.

6 Q. This is not something you  
7 looked at?

8 A. That's correct.

9 Q. Take a look with me, if you  
10 would, at Page 3.

11 Do you see the first full  
12 paragraph on Page 3 relating to recall  
13 bias?

14 A. I'm sorry, which paragraph?

15 Q. Page 3, first full  
16 paragraph.

17 A. Where it starts, A second  
18 measurement error?

19 Q. Yes.

20 And this paragraph relates  
21 to recall bias, right?

22 A. Okay. I see that, yes.

23 Q. And are you familiar with  
24 the concept of recall bias?

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1 A. I'm not sure.

2 Q. When you design surveys, do  
3 you attempt to ensure that the results  
4 aren't impacted by recall bias?

5 A. I'm not sure how recall bias  
6 is being defined in this situation.

7 Q. How do you define recall  
8 bias?

9 A. I don't think I have a  
10 working definition of recall bias. I'm  
11 not sure what it means, what it's  
12 referring to here. It doesn't seem to  
13 define it.

14 Q. Would you agree that in  
15 order for a survey to generate valid  
16 results, the respondent must have the  
17 correct information, manage to recall it  
18 at the time of the survey, and be able to  
19 provide it in the correct way?

20 ATTORNEY JACOBSON:

21 Objection. Compound.

22 THE WITNESS: Well, that's  
23 the -- you know, you're  
24 paraphrasing the sentence in the

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1 paper.

2 You know, I think that in  
3 the pre-test we found that the  
4 teachers did have that information  
5 and were able to recall it at the  
6 time of the survey.

7 So if that's what recall  
8 bias is, then that -- I'm not  
9 concerned about it.

10 BY ATTORNEY PISTILLI:

11 Q. Do you see the statement, In  
12 the case of teachers, the question arises  
13 as to whether or not teachers correctly  
14 recalled their working hours over a given  
15 period of time that takes into account  
16 the irregularity of their daily cycles,  
17 the number of different aspects of their  
18 job and the open-ended nature of their  
19 work?

20 Do you see that?

21 A. Yes.

22 Q. Do you have any basis to  
23 dispute that statement?

24 A. It doesn't seem to be making

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1 a statement. It says the question arises  
2 as to whether or not teachers correctly  
3 recall, not making a statement that the  
4 teachers don't recall or can't recall.

5 Q. Well, in fact, as we  
6 discussed previously, the conclusion of  
7 this article is that recent research  
8 raises concerns about the accuracy of  
9 teachers' working time estimates through  
10 survey questionnaires, right?

11 ATTORNEY JACOBSON:

12 Objection. Form.

13 THE WITNESS: In Belgium,  
14 yes. In total.

15 But not involving  
16 disruptions due to social media.

17 BY ATTORNEY PISTILLI:

18 Q. But this survey specifically  
19 looks at teachers' ability to recall the  
20 amount of time they devoted to an  
21 enumerated set of discrete tasks during a  
22 workday, correct?

23 A. Correct. It seems a pretty  
24 burdensome process compared to the

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1     simplicity of focusing in on  
2     repercussions of social media use in the  
3     classroom.

4             Q.     Do you see where it says, A  
5     third measure of error relates to the  
6     assumption that the respondent is sincere  
7     in their responses?

8                     Do you see that?

9             A.     And this is?

10            Q.     Directly below the paragraph  
11     we've been looking at.

12            A.     I'm sorry. What page are we  
13     on?

14            Q.     We're on Page 3.

15            A.     Yes, I see that.

16            Q.     And do you agree that error  
17     can be introduced into survey responses  
18     if the respondent is not sincere in their  
19     responses?

20                     ATTORNEY JACOBSON:

21                     Objection to form.

22                     THE WITNESS:

23                     Hypothetically, if they're not  
24                     sincere in their responses, then,



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1           you know, that could result in  
2           measurement error.

3                   But I have no reason to  
4           believe that the respondents to  
5           our survey weren't sincere in  
6           their responses.

7   BY ATTORNEY PISTILLI:

8           Q.       But you didn't do anything  
9           to test whether they were sincere in  
10          their responses, correct?

11          A.       My experience as a market  
12          researcher is that when respondents  
13          undertake to take a survey, you know,  
14          they are sincere in their responses and  
15          are responding to the best of their  
16          ability.

17          Q.       But in the market research  
18          work you do --

19          A.       Survey research, in general.  
20          Not just market research.

21          Q.       Well, the survey here  
22          directly related to a subject about which  
23          the respondent very well could have been  
24          aware that their school district had a

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1 direct financial interest, correct?

2 A. Hypothetically, that's  
3 possible.

4 Q. And, again, not something  
5 you tested?

6 ATTORNEY JACOBSON:

7 Objection to form.

8 THE WITNESS: We didn't test  
9 for knowledge of the lawsuit.

10 BY ATTORNEY PISTILLI:

11 Q. Let's take a look at another  
12 article.

13 ATTORNEY PEILEN: Tab 37.

14 - - -

15 (Whereupon, Exhibit  
16 Klein-15, No Bates, Improving the  
17 Quality of Retrospective Reports:  
18 Calendar Interviewing  
19 Methodologies was marked for  
20 identification.)

21 - - -

22 BY ATTORNEY PISTILLI:

23 Q. Exhibit-15. Take a minute  
24 to look at Exhibit-15 and let me know if

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1 this is something you're familiar with.

2 A. Yeah, I recognize this as  
3 a -- as one of the articles that was  
4 cited by -- in the rebuttal to my report  
5 that described an event history calendar.

6 I didn't read the article,  
7 though.

8 Q. So you cite it in your  
9 report, but you didn't read it?

10 A. I said -- I think I said  
11 I -- that I noted that it was footnoted  
12 in one of the rebuttal reports.

13 But no, I did not read it.

14 - - -

15 (Whereupon, Exhibit  
16 Klein-16, No Bates, 8/1/25  
17 Rebuttal Expert Report Replying to  
18 the Reports of Dr. Michael J.  
19 Stern and Dr. Darius Lakdawalla,  
20 Charleston, was marked for  
21 identification.)

22 - - -

23 BY ATTORNEY PISTILLI:

24 Q. So we're going to mark as

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1 Exhibit-16 just one of your rebuttal  
2 reports.

3 If you could turn to Page 3.

4 A. Yes.

5 Q. Paragraph 8.

6 A. Yes.

7 Q. And do you see that Footnote  
8 3 is a citation to Belli?

9 A. Yes.

10 Q. And then the title is,  
11 Improving Retrospective Reports and  
12 Surveys?

13 A. Yes.

14 Q. Now this citation is a  
15 little bit different, but is it your  
16 understanding that this was the article  
17 that you meant to refer to in your  
18 report?

19 A. I believe so.

20 Q. And you, in your report,  
21 don't you rely on this article to respond  
22 to some of Mr. Stern's critiques, right?

23 A. Yes.

24 Q. And in particular, you cite

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1 this on the topic of retrospective  
2 reporting and validity of results based  
3 on retrospective reporting?

4 A. Yes.

5 Q. And, in fact, this is the  
6 only thing that you cite in order to  
7 support the proposition that your survey  
8 is aligned with the concept of an event  
9 history calendar; is that right?

10 A. That's correct.

11 Q. What's an event history  
12 calendar?

13 A. Let me make sure I get the  
14 definition here right.

15 So event history calendar  
16 uses, as it says here on -- there's no  
17 page number.

18 It includes dates of  
19 noteworthy events for interviewers to use  
20 as temporal anchors. It's really  
21 describing the qualitative interviewing  
22 not quantitative interviewing as we did  
23 here.

24 But it points out that by

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1 using clearly identified dates, the  
2 interview produces more information,  
3 better information, and that the  
4 interviewee enjoys the task more, which  
5 is kind of irrelevant here, given it's an  
6 Internet interview.

7 But I think what it implies  
8 for our -- my survey is that by tying it  
9 to specific events, the shutdown prior to  
10 COVID or -- and the coming back to  
11 in-person instruction, allows the  
12 respondent to think about those dates and  
13 recognize what was going on at that time  
14 as it relates to classroom -- diversion  
15 of classroom time due to social media.

16 Q. So just so it's clear, event  
17 history calendars are survey  
18 methodologies that involve a narrative or  
19 conversational style of respondent  
20 expression, right?

21 A. It's a qualitative  
22 interviewing style, yes.

23 Q. And you didn't do that,  
24 right?

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1           A.       No, we used a quantitative  
2 style.

3           Q.       Just a couple of other  
4 questions about this article.

5                   First, you found it  
6 appropriate to rely on this article,  
7 right?

8           A.       I point -- I used it to  
9 support the validity of the data that we  
10 collected, just as Dr. Stern did to  
11 criticize it.

12          Q.       But there's nothing in this  
13 article about social media, right?

14          A.       No, there's not.

15          Q.       But, still, somehow you're  
16 able to find some relevance to it, right?

17                   ATTORNEY JACOBSON:

18                   Objection. Form.

19                   THE WITNESS: I think so,  
20 yes.

21                   BY ATTORNEY PISTILLI:

22          Q.       Because that's -- that's  
23 what you do, right? The articles aren't  
24 going to be about exactly the question

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1     you're asking and they still have some  
2     relevance to the debate, right?

3             A.       Some relevance, usually.

4             Q.       All right. We'll come back  
5     to this article?

6                     ATTORNEY PISTILLI: But  
7             right now I'm going to give you  
8             Exhibit-17, which is --

9                     -   -   -

10                    (Whereupon, Exhibit  
11             Klein-17, No Bates, Event History  
12             Calendar, Lavrakas, was marked for  
13             identification.)

14                    -   -   -

15     BY ATTORNEY PISTILLI:

16             Q.       Do you see that Exhibit-17  
17     is an entry from the Encyclopedia of  
18     Survey Research Methods?

19             A.       Yes.

20             Q.       Is that a reference that  
21     you're familiar with?

22             A.       No.

23             Q.       Do you see that this is an  
24     encyclopedia entry defining an event



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1 history calendar?

2 A. That's what it appears to  
3 be, yes.

4 Q. So we can look at getting  
5 another copy of this. But for now I can  
6 represent to you -- I'm not sure why it's  
7 not appearing -- that this entry was  
8 co-authored by Belli, whose article we  
9 were just discussing.

10 ATTORNEY JACOBSON: I would  
11 object to any testimony being  
12 offered without a complete exhibit  
13 and without information that  
14 counsel is representing without it  
15 being shown in the exhibit.

16 BY ATTORNEY PISTILLI:

17 Q. So looking at Page 2, do you  
18 see the definition of an event history  
19 calendar begins by saying, The event  
20 history calendar is a conversational  
21 interviewing approach, right?

22 A. Yes.

23 Q. So, again, that's not what  
24 you did, right?

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1           A.       That's correct. We used a  
2       quantitative Internet survey.

3           Q.       And then do you see, looking  
4       further down, toward the middle of the  
5       page, one of the points it makes is that  
6       an event history calendar uses parallel  
7       retrieval cues?

8                    Do you see that?

9           A.       Can you give me an  
10       approximate line?

11          Q.       Sure. Look -- look starting  
12       where the Page 247 break is.

13          A.       Oh, okay.

14                    Okay. Yes, I see it.

15          Q.       And parallel retrieval,  
16       right, involves using different types of  
17       events to help the respondent situate  
18       specific events in a timeline, right?

19          A.       It's not a phrase I'm  
20       familiar with.

21          Q.       Are you familiar with the  
22       fact that it's a component of the event  
23       history calendar approach?

24                    ATTORNEY JACOBSON:

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1           Objection to form.

2                   THE WITNESS:   Again, I'm --  
3           it's -- I'm not familiar with  
4           the -- with the phrase.   I mean,  
5           the concept seems straightforward.

6   BY ATTORNEY PISTILLI:

7           Q.       But the concept here, as  
8           they -- they give an example as, you  
9           know, you might ask about periods of  
10          unemployment and periods of change in  
11          residence because those may help the  
12          respondent more accurately situate those  
13          events in time, right?

14          A.       Right.

15          Q.       But you didn't rely on any  
16          parallel retrieval cues in your survey,  
17          right?

18                   ATTORNEY JACOBSON:

19          Objection.   Form.

20                   THE WITNESS:   Well, I  
21          didn't, for example, put a date --  
22          I didn't say March of 2020 and the  
23          school shut down.

24                   I guess that would be an

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1 example of a parallel or --

2 BY ATTORNEY PISTILLI:

3 Q. Well, no. You didn't, for  
4 instance, ask teachers about a timeline  
5 of their life events to help them situate  
6 responses relating to social media,  
7 right?

8 A. Well, we asked them, you  
9 know, when you first started teaching.

10 And life events like, you  
11 know, losing your job due to COVID and so  
12 on, I think, would qualify as a life  
13 event.

14 Q. It's your testimony that the  
15 teachers lost their job due to COVID?

16 A. Some did.

17 Q. Do you see where it says,  
18 It's the use of the respondents' own  
19 remembered events as cues to recall less  
20 easily retrieved information that is  
21 hypothesized to lead to benefits in data?

22 A. I'm sorry, where would that  
23 be?

24 Q. The very bottom of the page

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1 we're looking at.

2 A. It's hypothesized to do  
3 that. I see that.

4 Q. And you didn't allow your  
5 respondents, through a flexible  
6 conversational interviewing style, to  
7 themselves generate the life events that  
8 were used as cues in your survey, right?

9 ATTORNEY JACOBSON:

10 Objection. Form.

11 THE WITNESS: No. We  
12 used -- we used an Internet survey  
13 that tied their responses to  
14 events that they would be  
15 naturally familiar with.

16 BY ATTORNEY PISTILLI:

17 Q. But you didn't allow them  
18 to -- strike that.

19 You didn't use the  
20 respondents' own remembered events as  
21 cues, correct?

22 A. Except when we asked them,  
23 you know, to estimate the time diverted  
24 when they first began teaching.

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1                   So that was their own event.  
2                   Their own life event.

3                   Q.       They didn't select the life  
4                   events that they would use as anchors,  
5                   correct?

6                   A.       That's correct.   This was a  
7                   quantitative interview where we wanted to  
8                   tabulate results.

9                   Q.       Right.   But in a  
10                  conversational -- in an event history  
11                  calendar approach, the respondents select  
12                  the life events that are used as the  
13                  cues.

14                  ATTORNEY JACOBSON:

15                  Objection.   Form.

16                  THE WITNESS:   In this  
17                  version of it, yes.

18                  BY ATTORNEY PISTILLI:

19                  Q.       Take a look with me, if you  
20                  would, at the next page.

21                  Do you see where it says, In  
22                  addition to the length of the reference  
23                  period, instrument designers need to  
24                  determine the smallest units of time in

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1 which life events are to be allocated,  
2 whether years, months or, in some  
3 instances, thirds of a month.

4 Do you see that?

5 A. No.

6 Q. The third full sentence on  
7 Page 3.

8 A. Third full sentence.

9 Oh, okay. Thank you.

10 Okay. I see that.

11 Q. And so this indicates that  
12 the smallest acceptable unit of time  
13 would be, in some instances, thirds of a  
14 month, correct?

15 A. For locating life events,  
16 not for estimating the amount of time  
17 diverted to teaching due to social media.

18 Q. And the life events here --  
19 you asked people to estimate social media  
20 diversion going back multiple years down  
21 to the minute, right?

22 ATTORNEY JACOBSON:

23 Objection. Form.

24 THE WITNESS: No, not down

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1 to the minute. How many  
2 minutes --

3 BY ATTORNEY PISTILLI:

4 Q. Right.

5 A. -- were spent dealing with  
6 disruptions due to student use of social  
7 media.

8 And it is in the context of  
9 what that experience has been in the  
10 current school year, the most recent past  
11 school year, and so on as appropriate for  
12 how long they've been teaching.

13 Q. Can you point me to any  
14 academic article or other support for the  
15 proposition that an event calendar  
16 history can appropriately be used to ask  
17 questions getting down as granular as the  
18 number of minutes devoted in a day to  
19 specific tasks?

20 A. I hadn't seen the, you know,  
21 specific definition of event history  
22 calendar before seeing the rebuttal  
23 report.

24 And what I do believe and



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1 recognize I've done is essentially used  
2 that concept in the design of the survey,  
3 not the, you know, prescribed  
4 step-by-step qualitative interviewing  
5 process that is -- was the basis for  
6 these event history calendars, but  
7 converted that to a quantitative survey  
8 that could be administered to over 2,000  
9 teachers over the Internet.

10 Q. My question -- so there  
11 was -- my question, sir, was whether you  
12 can point me to any academic literature  
13 supporting use of calendar interviewing  
14 methodologies that ask the respondents to  
15 recall time spent down to the level of  
16 minutes on a given day?

17 ATTORNEY JACOBSON:

18 Objection. Form.

19 THE WITNESS: The -- no, I  
20 can't point you to a -- any  
21 specific academic reference.

22 But it feels like -- and I  
23 believe that this definition that  
24 you've provided supports what we

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1 did.

2 BY ATTORNEY PISTILLI:

3 Q. Let's turn back to  
4 Exhibit-15, which, again, is the article  
5 that you cited in support of your  
6 methodology, right?

7 A. And which Dr. Stern  
8 supported -- cited in support of his  
9 criticism.

10 Q. And do you see in the  
11 introduction there where it says,  
12 Research on human memory suggests that  
13 the quality of data obtained through  
14 retrospective reporting is seriously  
15 compromised by the limitations on  
16 respondent memory?

17 Do you see that?

18 A. Yes.

19 Q. Do you have any basis to  
20 dispute that statement?

21 A. I think we actually dealt  
22 with that in our survey by tying it to  
23 specific memorable events.

24 I think if we -- if we'd

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1 picked a random date and asked about  
2 that, that would have been a challenge  
3 for a respondent.

4 But the -- you know, the --  
5 by tying it to the events around COVID, I  
6 think we got good results, valid results  
7 that -- that are accurate and usable for  
8 Dr. Ward's purposes.

9 Q. Well, but this study we're  
10 looking at is about the use of event  
11 history calendar techniques, correct?

12 A. Yes.

13 Q. If you'd look with me, if  
14 you would, and I recognize this doesn't  
15 have pages, but the section toward the  
16 very beginning titled, The Potential of  
17 Event History Calendars?

18 A. Yes.

19 Q. And it says, Problems with  
20 the quality of retrospective reports  
21 obtained with Q-list interviews may be  
22 ameliorated with new methodologies that,  
23 A, optimize usage of autobiographical  
24 memory cues, and, B, allow for a more

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1 narrative or conversational style of  
2 respondent expression, correct?

3 A. That's what it says, yes.

4 Q. And you didn't do anything  
5 that involved a narrative or a  
6 conversational style of respondent  
7 expression, correct?

8 ATTORNEY JACOBSON:

9 Objection. Form.

10 THE WITNESS: No. We  
11 basically translated that into the  
12 quantitative interviewing that we  
13 did.

14 BY ATTORNEY PISTILLI:

15 Q. Well, but the conclusion we  
16 were just looking at suggests that there  
17 are serious recall issues when you do it  
18 via quantitative interviewing method,  
19 correct?

20 ATTORNEY JACOBSON:

21 Objection. Form.

22 THE WITNESS: No, I don't  
23 think that's what I said.

24 BY ATTORNEY PISTILLI:

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1 Q. That's what this article  
2 says, right?

3 A. I don't think this article  
4 says anything about quantitative  
5 interviewing.

6 Q. The use of traditional  
7 Q-list approaches results in  
8 retrospective reporting errors that  
9 become considerably more pronounced with  
10 events that have occurred in the more  
11 distant past.

12 Do you see that right below  
13 the introduction?

14 A. Yes.

15 Q. You don't have any basis to  
16 dispute that statement, do you?

17 A. No. I think that that's why  
18 we designed the survey the way we did.

19 Q. You did a Q-list survey?

20 A. The -- we did a quantitative  
21 survey and tabulated the results. I  
22 don't think that what we did would  
23 necessarily fall into the category of a  
24 Q-list, question list.

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1                   We asked questions, as I've  
2     done for 50 years or more, and got  
3     answers that we tabulated and that  
4     Dr. Ward appropriately used in his  
5     analysis.

6                   Q.       You asked a list of  
7     questions, right?

8                   ATTORNEY JACOBSON:

9                   Objection.    Form.

10                  THE WITNESS:   It was a  
11     questionnaire, yes.

12     BY ATTORNEY PISTILLI:

13                  Q.       Now, let's look further back  
14     in this article and talk about the types  
15     of things that these event history  
16     calendars attempt to measure.

17                   And take as much time as  
18     you'd like, but let me know if this  
19     article indicates or provides any  
20     examples of event history calendars being  
21     used to represent -- to -- strike that.

22                   Let me know if this article  
23     provides any examples of event history  
24     calendars being used to measure time

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1 spent on a daily or even weekly basis.

2 Are you able to answer my  
3 question, sir?

4 A. Could you repeat your  
5 question, please?

6 ATTORNEY JACOBSON: And I'll  
7 just note for the record the  
8 witness was continuing to review  
9 the document, as he had been  
10 invited to do by counsel before  
11 answering the question.

12 BY ATTORNEY PISTILLI:

13 Q. And to remind you, the  
14 question is, does this article provide  
15 any examples of event history calendars  
16 being used to measure time spent on a  
17 daily or weekly basis?

18 A. It's doesn't appear to have  
19 any examples of that.

20 Q. It measures things like  
21 whether, at a given point in time, you  
22 were employed and whether you were full  
23 time or part time, right? That's the  
24 sort of thing that --

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1 A. That's right.

2 Q. -- that's being used here.

3 And can you point me to any  
4 other examples of event historical  
5 calendars being used in the academic  
6 literature to measure time spent on a  
7 daily basis?

8 A. No. As I said earlier, I  
9 hadn't come across the term "event  
10 history calendar" until I saw it in the  
11 rebuttal report and realized that we've  
12 been doing it that way ourselves without  
13 reference to this report -- this  
14 particular paper.

15 ATTORNEY PISTILLI: Good  
16 time for a break?

17 ATTORNEY JACOBSON: Yes.

18 VIDEO TECHNICIAN: The time  
19 is 2:58 p.m. We are off the  
20 record.

21 - - -

22 (Whereupon, a brief recess  
23 was taken.)

24 - - -



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1 (Whereupon, Exhibit  
2 Klein-18, No Bates, 8/1/25  
3 Rebuttal Expert Report Replying to  
4 the Reports of Dr. Michael J.  
5 Stern and Dr. Darius Lakdawalla,  
6 Breathitt, was marked for  
7 identification.)

8 - - -

9 (Whereupon, Exhibit  
10 Klein-19, No Bates, 8/1/25  
11 Rebuttal Expert Report Replying to  
12 the Reports of Dr. Michael J.  
13 Stern and Dr. Darius Lakdawalla,  
14 DeKalb, was marked for  
15 identification.)

16 - - -

17 (Whereupon, Exhibit  
18 Klein-20, No Bates, 8/1/25  
19 Rebuttal Expert Report Replying to  
20 the Reports of Dr. Michael J.  
21 Stern and Dr. Darius Lakdawalla,  
22 Harford, was marked for  
23 identification.)

24 - - -

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1 (Whereupon, Exhibit  
2 Klein-21, No Bates, 8/1/25  
3 Rebuttal Expert Report Replying to  
4 the Reports of Dr. Michael J.  
5 Stern and Dr. Darius Lakdawalla,  
6 Irvington, was marked for  
7 identification.)

8 - - -

9 (Whereupon, Exhibit  
10 Klein-22, No Bates, 8/1/25  
11 Rebuttal Expert Report Replying to  
12 the Reports of Dr. Michael J.  
13 Stern and Dr. Darius Lakdawalla,  
14 Tucson, was marked for  
15 identification.)

16 - - -

17 VIDEO TECHNICIAN: The time  
18 is 3:18 p.m. We are on the  
19 record.

20 BY ATTORNEY PISTILLI:

21 Q. All right. Mr. Klein, we've  
22 handed you what have been marked as  
23 Exhibit-18, 19, 20, 21 and 22.

24 Do you have those in front

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1 of you?

2 A. Yes.

3 Q. And just to make sure we  
4 have them in the record.

5 Is Exhibit-18 a copy of your  
6 rebuttal report in the Breathitt case?

7 A. Yes.

8 Q. And is Exhibit-19 a copy of  
9 your rebuttal report in the DeKalb case?

10 A. Yes.

11 Q. Is Exhibit-20 a copy of your  
12 rebuttal report in the Harford case?

13 A. Yes.

14 Q. Is Exhibit-21 a copy of your  
15 rebuttal report in the Irvington case?

16 A. No. Tucson.

17 Q. Exhibit-21 is a copy of your  
18 rebuttal report in the Tucson case?

19 A. Yes.

20 Q. And is Exhibit-22 a copy of  
21 your rebuttal report in the DeKalb case?

22 A. No. It's also Tucson.

23 Q. Sorry about that. Give us  
24 22 back, and we'll get you a replacement

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1 of DeKalb.

2 ATTORNEY PISTILLI: What's  
3 the tab number? What's DeKalb?

4 ATTORNEY WHITELEY: 19.

5 ATTORNEY PISTILLI: Can you  
6 bring up Tab 19, please? DeKalb  
7 is Tab 19?

8 ATTORNEY PEILEN: Yes.

9 ATTORNEY PISTILLI: Tab 19.

10 ATTORNEY PEILEN: Sorry,  
11 it's Exhibit-19. It's Tab 10.

12 BY ATTORNEY PISTILLI:

13 Q. And could we just scroll  
14 through this, please?

15 A. DeKalb?

16 Q. And do you see that -- we'll  
17 mark this as Exhibit-22.

18 Is that a copy of your  
19 report in the DeKalb case on the screen?

20 A. What's on the screen, yes.  
21 I thought I had one for DeKalb.

22 ATTORNEY WHITELEY:

23 Irvington and Tucson. Thought  
24 that was --

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1                   ATTORNEY PEILEN:   18 is  
2                   Breathitt.   19 is DeKalb.   20 is  
3                   Harford.   21, Irvington.   22,  
4                   Tucson

5                   ATTORNEY WHITELEY:   The one  
6                   we marked as 20 is Tucson.

7                   ATTORNEY PEILEN:   It should  
8                   be 22.

9                   ATTORNEY JACOBSON:   We have  
10                  all the rebuttal reports in  
11                  Mr. Klein's binder if you want to  
12                  mark those rebuttal reports.

13                  ATTORNEY PISTILLI:   Sure.  
14                  Can we just mark the binder as a  
15                  composite of all the rebuttal  
16                  reports? Does that work for you?

17                  ATTORNEY JACOBSON:   Sure,  
18                  yes.

19                  ATTORNEY PISTILLI:   Let's  
20                  just mark that as Exhibit-22.  
21                  Appreciate the courtesy.

22                  ATTORNEY JACOBSON:   We'll  
23                  have to take out the openings,  
24                  but --

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1 ATTORNEY PISTILLI: We can  
2 work on that.

3 BY ATTORNEY PISTILLI:

4 Q. And just a couple other  
5 clean-up questions from earlier in the  
6 day.

7 We talked some about the  
8 drafting of your report. But who  
9 actually designed the survey instrument?

10 A. I did.

11 Q. And did you work with staff  
12 on the design of the survey instrument?

13 A. Yes.

14 Q. What role did staff play in  
15 that?

16 A. Designing a good survey is a  
17 collaborative process. And the staff  
18 assisted in some of the wording issues,  
19 but, also, they were conducting the  
20 pre-test interviews and managing the  
21 logistics of that.

22 Q. We also talked earlier today  
23 about some of your work relating to  
24 marketing studies.

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1 A. I stepped on my microphone.

2 I broke it. Sorry.

3 Q. Do you recall we also talked  
4 earlier today about some of your work on  
5 marketing studies?

6 A. Yes.

7 Q. And when you, for instance,  
8 do a survey regarding Maker's Mark, do  
9 you make any effort to not include  
10 employees of Maker's Mark manufacturer?

11 ATTORNEY JACOBSON:

12 Objection to form.

13 THE WITNESS: Well, I mean,  
14 I've never done a survey for  
15 Maker's Mark, so --

16 BY ATTORNEY PISTILLI:

17 Q. Just, it's a hypothetical.

18 A. Yeah. Hypothetical.

19 It depends on what the  
20 survey is. You want to screen out anyone  
21 who would have an unusual amount of  
22 knowledge about a particular subject.

23 So I wouldn't ask, do you  
24 work for Maker's Mark? But anyone in the

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1 alcoholic beverage industry would be --  
2 would be screened out, because they would  
3 have, let's say, more information about  
4 the category than the average consumer.

5 Q. And would you ever do a  
6 consumer survey about a product and  
7 survey just the employees of the product  
8 manufacturer?

9 ATTORNEY JACOBSON:

10 Objection. Form.

11 THE WITNESS: I guess it  
12 depends on what the survey is for.

13 BY ATTORNEY PISTILLI:

14 Q. To see how much they like  
15 the brand.

16 A. That is a situation that  
17 could be relevant for a survey in some,  
18 you know, limited subpopulation, even  
19 employees.

20 Q. But if you were -- if you  
21 were trying to understand just general  
22 consumer sentiment, you wouldn't survey  
23 just a group of people who were employed  
24 by that manufacturer, right?



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1 ATTORNEY JACOBSON:

2 Objection. Form.

3 THE WITNESS: Again, it  
4 depends on -- on the situation in  
5 which you're trying to -- trying  
6 to measure. It might be very  
7 important to understand the  
8 attitude your employees have  
9 toward your particular product.

10 ATTORNEY PISTILLI: Let's  
11 move on to a new topic.

12 - - -

13 (Whereupon, Exhibit  
14 Klein-23, No Bates, Reference  
15 Manual on Scientific Evidence,  
16 Third Edition, was marked for  
17 identification.)

18 - - -

19 BY ATTORNEY PISTILLI:

20 Q. I'm handing you a document  
21 that's been marked as Exhibit-23.

22 What is Exhibit-23?

23 A. I'm sorry?

24 Q. What is Exhibit-23?

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1           A.       It's a chapter from the  
2       Reference Manual on Scientific Evidence  
3       called The Reference Guide on Survey  
4       Research by Shari Diamond.

5           Q.       And is this something that  
6       you rely on when you offer expert  
7       testimony?

8           A.       I find this to be a very  
9       helpful guide.

10          Q.       I mean, as we discussed  
11       before, a valid survey needs to include a  
12       sample that's representative of the  
13       target population, right?

14          A.       That's correct.

15                   Well, I guess it depends on  
16       what the survey is orienting towards.  
17       But, generally, you would like to have a  
18       representative sample of whatever  
19       universe you've defined.

20          Q.       And look with me, if you  
21       would, at Page 382.

22          A.       Yes.

23          Q.       Do you see where it says,  
24       Nonetheless, when respondents are not

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1 selected randomly from the relevant  
2 population, the expert should be prepared  
3 to justify the method used to select  
4 respondents. Special precautions are  
5 required to reduce the likelihood of  
6 biased samples.

7 Do you see that?

8 A. Yes.

9 Q. And do you agree with that  
10 statement?

11 A. In general.

12 Q. What, if any, steps did you  
13 take to ensure that the individuals who  
14 completed your survey were, in fact,  
15 representative of the overall target  
16 population?

17 A. Well, rather than taking a  
18 sample of the population, we invited  
19 every member of the identified universe  
20 to participate in the survey and sent  
21 them multiple reminders to do so.

22 And so I have no reason to  
23 believe that we don't have a  
24 representative sample.

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1           Q.       So you sent it to everyone,  
2     right?

3           A.       Yes.

4           Q.       But then only a relatively  
5     small subset of the people you sent it to  
6     responded, correct?

7           A.       As is typical with Internet  
8     surveys with no incentive.

9           Q.       But my question, sir, is  
10    what, if anything, did you do to ensure  
11    that the population that responded was  
12    representative of the larger group of  
13    people who were given the opportunity to  
14    respond?

15          A.       By sending the multiple  
16    reminders and trying not to -- not  
17    trying, but by not disclosing the nature  
18    of the survey or the reason why their  
19    opinion is being solicited.

20          Q.       Well, I understand that you  
21    didn't, at least in your communications,  
22    say what the purpose of the survey was  
23    and that you sent multiple reminders.

24                   But explain to me how that

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1 ensures that there isn't a relevant  
2 difference between the people who chose  
3 to respond and the people who chose not  
4 to respond?

5 A. As I said, I have no reason  
6 to believe that these people who did not  
7 respond are any different or had any  
8 particular reason for not responding.

9 But, you know, beyond the  
10 multiple reminders and inviting everyone  
11 rather than just a sample, that's what we  
12 did.

13 Q. Take a look with me, if you  
14 would, at Page 383 of the Reference Guide  
15 on Survey Research.

16 A. Yes.

17 Q. Do you see where it says,  
18 Even when a sample is drawn randomly from  
19 a complete list of elements in the target  
20 population, responses or measures may be  
21 obtained on only part of the selected  
22 sample.

23 Do you see that?

24 A. Yes.

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1 Q. And that's what happened  
2 here, right? You only obtained responses  
3 from a portion of the sample?

4 ATTORNEY JACOBSON:

5 Objection. Form.

6 THE WITNESS: We received --  
7 we got a sample -- we got  
8 responses from a sample of the  
9 population, yes.

10 BY ATTORNEY PISTILLI:

11 Q. And then it goes on to say,  
12 that, If this lack of response is  
13 distributed randomly, valid inferences  
14 about the population can be drawn with  
15 the assurance using the measures obtained  
16 from the available elements of the  
17 sample.

18 Do you see that?

19 A. Yes.

20 Q. But then it goes on to say,  
21 right, that the difficulty is that  
22 non-response often is not random.

23 Do you see that?

24 A. Yes.

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1 Q. And do you agree with that  
2 statement?

3 A. As it says, it may not be  
4 random. But that doesn't say it's always  
5 not random.

6 Q. You see where it goes on to  
7 say, The key to evaluating the effect of  
8 non-response in a survey is to determine,  
9 as much as possible, the extent to which  
10 non-respondents differ from the  
11 respondents and the nature of the  
12 responses they would provide if they were  
13 present in the sample.

14 Do you see that?

15 A. Yes.

16 Q. And do you agree with that  
17 statement?

18 A. In -- in general.

19 Q. And what efforts, if any,  
20 did you take to determine whether  
21 non-respondents differ from respondents  
22 in the nature of the responses they would  
23 provide in this case?

24 A. We had no information about

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1 the non-respondents. And so we did what  
2 we do in cases related to trademarks or  
3 confusion or false advertising, don't do  
4 anything to tip off what the nature of  
5 the survey is and take as broad a sample  
6 as you can.

7 We got response rates that  
8 were in line with what we expect from an  
9 Internet survey with no incentive.

10 Q. But just to be clear, you  
11 didn't undertake any efforts to determine  
12 whether non-respondents and respondents  
13 are similarly situated, correct?

14 ATTORNEY JACOBSON:

15 Objection. Form.

16 THE WITNESS: And I have no  
17 reason to think they're not.

18 BY ATTORNEY PISTILLI:

19 Q. But you have no basis to say  
20 that they are?

21 A. I have no basis to say they  
22 aren't.

23 Q. You also have no basis to  
24 say that they are?



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1           A.       I think we're agreeing with  
2 each other.

3           Q.       So you're --

4           A.       -- I have no --

5           Q.       -- agreeing with me --

6           A.       I have no basis for saying  
7 that they're any different than the  
8 people who did respond. And, you know,  
9 the various rebuttal reports that I've  
10 seen don't suggest any reason why they  
11 would be different.

12          Q.       You have no basis to say  
13 that the people who did respond aren't  
14 different from the people who didn't,  
15 correct?

16                   ATTORNEY JACOBSON:

17           Objection. Form. And asked and  
18 answered.

19                   THE WITNESS: As I -- as I  
20 said before, the -- by inviting  
21 everyone to participate and  
22 sending multiple reminders, that  
23 meets kind of the standards that  
24 we've used in -- in all of our

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1 other surveys.

2 BY ATTORNEY PISTILLI:

3 Q. What is your basis, if any,  
4 for the claim that the individuals who  
5 did not respond are similarly situated to  
6 the individuals who did?

7 A. I have no basis for -- for  
8 believing that they are not -- that there  
9 is any difference.

10 Q. Right. And -- my apologies,  
11 were you done?

12 A. Yes.

13 Q. But it's equally true that  
14 you have no basis for saying that they're  
15 the same?

16 A. We used the standards that  
17 we've used in hundreds of surveys that  
18 have been, you know, presented in court  
19 and accepted.

20 And in terms of taking a --  
21 using a complete census of -- trying to  
22 get a complete census of the population  
23 and get the maximum number of  
24 respondents.

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1 Q. But respectfully, sir, that  
2 wasn't my question.

3 My question is, do you have  
4 any basis for assuming that the  
5 non-responders and responders are  
6 similarly situated?

7 A. As I've said, I have no  
8 basis for thinking that they aren't  
9 similarly situated.

10 Q. And you have no basis for  
11 thinking that they are?

12 ATTORNEY JACOBSON:

13 Objection. Asked and answered.  
14 Repeatedly.

15 THE WITNESS: I think I've  
16 said clearly that I don't have any  
17 reason or any information that  
18 would lead me to believe that they  
19 are not -- that we don't have a  
20 valid, representative sample.

21 BY ATTORNEY PISTILLI:

22 Q. You also have no data or  
23 information that shows that they are a  
24 valid sample?

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1 ATTORNEY JACOBSON:

2 Objection. Form. And asked and  
3 answered.

4 THE WITNESS: Well, we don't  
5 have data from the respondents who  
6 did not answer. So I'm not sure  
7 what you would, you know, expect  
8 me to do in that situation.

9 Again, by not making the  
10 subject matter apparent in the  
11 invitation and getting the warming  
12 letter by the -- from the school  
13 board or the district office,  
14 wherever it came from, you know,  
15 we did everything we could to get  
16 the maximum response rate. And we  
17 got a response rate that was in  
18 line with what we've seen in other  
19 surveys on the Internet with no  
20 incentive.

21 BY ATTORNEY PISTILLI:

22 Q. Well, sir, but response rate  
23 and representativeness are related but  
24 distinct concepts, right?

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1 A. Yes.

2 Q. Yes.

3 And all else equal, the  
4 lower the response rate, the greater the  
5 concerns about representativeness,  
6 correct?

7 ATTORNEY JACOBSON:

8 Objection. Form.

9 THE WITNESS: It depends on  
10 the situation. I mean, that's  
11 not -- I don't think that's  
12 universally true.

13 BY ATTORNEY PISTILLI:

14 Q. Well, isn't it more likely  
15 that if two people out of 100 answer a  
16 survey, they're not going to be  
17 representative than if 98 out of 100  
18 answer a survey?

19 ATTORNEY JACOBSON:

20 Objection to form.

21 THE WITNESS: I think small  
22 samples can be just as accurate as  
23 large samples.

24 BY ATTORNEY PISTILLI:

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1 Q. Yeah. And they -- they can  
2 be. And, in fact, the reference guide  
3 we've been looking at acknowledges that  
4 they can, right?

5 A. Yes.

6 Q. But in order for them -- in  
7 order for small samples to be  
8 representative, the lack of response has  
9 to be distributed randomly, correct?

10 A. I think that's correct.

11 Q. And here you don't have any  
12 basis to know, one way or the other,  
13 whether the lack of response was  
14 distributed randomly?

15 ATTORNEY JACOBSON:

16 Objection. Form.

17 THE WITNESS: Again, I don't  
18 have any reason to think that it  
19 isn't.

20 BY ATTORNEY PISTILLI:

21 Q. And you don't have any  
22 reason to think that it is?

23 ATTORNEY JACOBSON:

24 Objection. Form.

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1 THE WITNESS: I like my  
2 description of it better.

3 BY ATTORNEY PISTILLI:

4 Q. Well, but, respectfully, I'm  
5 allowed to ask a question.

6 A. Yes.

7 Q. And it's your responsibility  
8 to answer it truthfully.

9 And so the question, again,  
10 is, do you have any evidence or data that  
11 would support the proposition that, in  
12 this case, the lack of response was  
13 distributed randomly?

14 ATTORNEY JACOBSON:

15 Objection. Form.

16 THE WITNESS: And as I've  
17 said, while I may not have any  
18 evidence that it's not random, I  
19 also don't have any reason to  
20 believe that it isn't.

21 BY ATTORNEY PISTILLI:

22 Q. You asked the survey  
23 participants some questions about their  
24 age, right?

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1 A. Let me -- yes.

2 Q. Question --

3 A. QS6.

4 Q. QS6 asks if they're under  
5 21, between 21 and 34, between 35 and 54  
6 and between 55 and over, right?

7 A. Yes.

8 Q. And each of the school  
9 districts has information about the age  
10 of its teaching staff, correct?

11 A. I don't know.

12 Q. Did you make any effort to  
13 determine whether the responses you got  
14 in your survey reporting the age of the  
15 respondents was representative of the  
16 teacher pool in the six districts?

17 ATTORNEY JACOBSON:

18 Objection. Form.

19 THE WITNESS: There was no  
20 data -- data available on the age  
21 distribution of teachers in the  
22 school district.

23 BY ATTORNEY PISTILLI:

24 Q. Did you ask whether the



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1 school districts had demographic  
2 information available about its teachers?

3 A. And I was told that they did  
4 not. It would not be available.

5 Q. You were told that the  
6 school districts don't know the age,  
7 gender, race, tenure of its teachers?

8 A. You asked specifically about  
9 age -- or I asked specifically about age  
10 in the survey. And I was told that that  
11 data was not available.

12 Q. And is the reason you asked  
13 is that you would have liked to be able  
14 to determine whether the ages of your  
15 respondents were representative of the  
16 ages of the overall teacher population?

17 ATTORNEY JACOBSON:

18 Objection. Form.

19 THE WITNESS: You know, I  
20 think that could be one use of  
21 that.

22 I think another would be to,  
23 you know, set quotas or do other  
24 things.

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1                   But when we decided to send  
2                   the invitation to everybody, then  
3                   we didn't need that.

4       BY ATTORNEY PISTILLI:

5               Q.       When you say "set quotas,"  
6       you mean ensure that, you know, each of  
7       the age bands is appropriately  
8       represented in the responses, right?

9               ATTORNEY JACOBSON:

10              Objection.   Form.

11              THE WITNESS:   That would be  
12              one possible use of that  
13              information.

14       BY ATTORNEY PISTILLI:

15              Q.       And did you ask about any  
16       other demographic data that you might  
17       have used to determine whether the  
18       respondent population was representative  
19       of the overall teacher population?

20              A.       No --

21              ATTORNEY JACOBSON:

22              Objection to form.

23              THE WITNESS:   -- because I  
24              had all the information that I

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1           needed to construct and conduct  
2           the survey.

3       BY ATTORNEY PISTILLI:

4           Q.       So you don't know, for  
5       example, whether the folks who responded  
6       to the survey were disproportionately old  
7       or young?

8                    ATTORNEY JACOBSON:

9           Objection.   Form.

10                   THE WITNESS:   The data was  
11       certainly collected and provided  
12       to Dr. Ward as part of his  
13       analysis.

14       BY ATTORNEY PISTILLI:

15           Q.       What data are you referring  
16       to?

17           A.       The data collected from the  
18       survey.

19           Q.       Well, my question was, you  
20       don't know whether the survey respondents  
21       were disproportionately old or young as  
22       compared to the overall teacher  
23       population?

24                    Do you understand that

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1 question?

2 ATTORNEY JACOBSON:

3 Objection. Form.

4 THE WITNESS: Yes, I think I  
5 understand the question.

6 BY ATTORNEY PISTILLI:

7 Q. And is that a true  
8 statement?

9 A. As I said, that information  
10 was not -- not available.

11 Q. And you don't know whether  
12 the respondents disproportionately teach  
13 certain subjects?

14 ATTORNEY JACOBSON:

15 Objection. Form.

16 THE WITNESS: We didn't ask  
17 what subjects they taught.

18 BY ATTORNEY PISTILLI:

19 Q. And you -- so then you don't  
20 know whether a disproportionate number of  
21 responders teach specific subjects?

22 ATTORNEY JACOBSON:

23 Objection. Form. And asked and  
24 answered.

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1 THE WITNESS: The question  
2 wasn't asked in the survey, so I  
3 certainly wouldn't have any basis  
4 for answering.

5 BY ATTORNEY PISTILLI:

6 Q. And it's certainly possible  
7 that students are more distracted in math  
8 class than social studies, right?

9 ATTORNEY JACOBSON:

10 Objection. Form.

11 THE WITNESS: I know I  
12 wasn't but -- no, I really don't  
13 know anything about the prevalence  
14 of distraction by subject matter.

15 BY ATTORNEY PISTILLI:

16 Q. Just at a general level, it  
17 is possible, right, that the run of  
18 students in a given school district are  
19 more engaged in certain subjects than  
20 they are in others?

21 ATTORNEY JACOBSON:

22 Objection. Form.

23 THE WITNESS: You know,  
24 that's possible. I mean, you

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1           certainly see differences across  
2           the school districts in terms of  
3           the disruptions due to social  
4           media, so.

5       BY ATTORNEY PISTILLI:

6           Q.       And if it were true that,  
7       hypothetically, kids were more distracted  
8       in math class than social studies and all  
9       the math teachers responded and none of  
10      the social studies teachers responded,  
11      your survey wouldn't be representative,  
12      right?

13                   ATTORNEY JACOBSON:

14           Objection.   Form.

15                   THE WITNESS:   Well, I mean,  
16           under that hypothetical --  
17           accepting your hypothetical, then  
18           if, hypothetically, we've got a  
19           biased sample, then we've got a  
20           biased sample.

21       BY ATTORNEY PISTILLI:

22           Q.       And then, for instance, you  
23       didn't ask for any information relating  
24       to teacher tenure from the districts,

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1 correct?

2 A. Yes, that's -- that's  
3 correct, because the teacher tenure  
4 really wasn't relevant in the survey.  
5 Because we were looking at teachers who  
6 had been in the same school as opposed to  
7 teachers who had switched schools and so  
8 on.

9 Q. Well, but, for instance, you  
10 don't have information about whether a  
11 disproportionate number of newer teachers  
12 responded to your survey, correct?

13 A. I guess that's correct, yes.

14 Q. And if, in general, newer  
15 teachers had greater difficulty with  
16 classroom management that could introduce  
17 bias into your survey, correct?

18 ATTORNEY JACOBSON:

19 Objection. Form.

20 THE WITNESS: Well,  
21 hypothetically, if -- and I don't  
22 know whether newer teachers would  
23 have more or less of a problem  
24 with disruptions due to social

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1 media. It could work one way --  
2 it could work either way.

3 BY ATTORNEY PISTILLI:

4 Q. But, again, it's just not  
5 something that you looked into at all?

6 A. That's correct. We had all  
7 the information we needed for the survey.

8 Q. If I could ask you to turn  
9 all the way back to Exhibit-1.

10 And can we go to Page 8,  
11 please?

12 A. Exhibit-1. Yes. Okay.  
13 And?

14 Q. Page 8.

15 A. Page 8.

16 Q. I want to look with you at  
17 Question 3.

18 A. Okay.

19 Q. And though we're looking at  
20 Exhibit-1, which I believe is your  
21 Breathitt report, Question 3 was the same  
22 for each of the six surveys, correct?

23 A. That's correct.

24 Q. And then do you see in the



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1 first listed question, it says,  
2 Unauthorized student use of social media,  
3 e.g., Facebook, Instagram, Snapchat,  
4 TikTok, YouTube, et cetera, during class.

5 Do you see that?

6 A. Yes.

7 Q. And then that same phrasing  
8 is repeated in the other social media  
9 question.

10 It says some, e.g.,  
11 Facebook, Instagram, Snapchat, TikTok,  
12 YouTube, et cetera.

13 Do you see that?

14 A. Yes.

15 Q. And so your survey defines  
16 social media as including but not being  
17 limited to Facebook, Instagram, Snapchat,  
18 TikTok and YouTube; is that fair?

19 ATTORNEY JACOBSON:

20 Objection. Form.

21 THE WITNESS: I think these  
22 are the primary social media  
23 platforms that middle and high  
24 school students would routinely

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1 access.

2 BY ATTORNEY PISTILLI:

3 Q. "e.g." means for example,  
4 right?

5 A. Yes.

6 Q. And then at the end you also  
7 say, et cetera, which means there are  
8 more?

9 A. Yes.

10 Q. So Facebook, Instagram,  
11 Snapchat, TikTok and YouTube, according  
12 to the survey question that you  
13 administered, are examples of social  
14 media but not the only examples, correct?

15 ATTORNEY JACOBSON:

16 Objection. Form.

17 THE WITNESS: They may not  
18 be the only forms of social media,  
19 but those are the ones that the  
20 students are -- are accessing and  
21 making use of.

22 BY ATTORNEY PISTILLI:

23 Q. Did you ask them that?

24 A. We asked the -- you know,

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1 when we were doing the teacher  
2 interviews, they had no problem with --  
3 with that kind of construction.

4 And the e.g. and et cetera  
5 were important there to make that  
6 parallel to all the other examples that  
7 we gave.

8 Because if we didn't, then  
9 it would really stand out as -- as being  
10 the focus of what the survey was all  
11 about.

12 Q. So I understand that your  
13 testimony is that teachers understood the  
14 phraseology. But that's really not my  
15 question.

16 It's just that on its face  
17 the clear meaning of the e.g. and the  
18 et cetera is that social media includes  
19 but is in no way limited to the five  
20 platforms you specifically reference,  
21 correct?

22 ATTORNEY JACOBSON:

23 Objection. Form.

24 THE WITNESS: Well, I think

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1           that teachers recognize that these  
2           are the platforms that students  
3           make use of. And so rather than  
4           trying to create a -- some other  
5           definition of social media, we  
6           simply listed the platforms that  
7           we know students use.

8       BY ATTORNEY PISTILLI:

9           Q.       If a teacher experienced  
10          disruption that they attributed to X,  
11          formerly known as Twitter, they should  
12          include that in their answer, right?

13                 ATTORNEY JACOBSON:

14          Objection. Form.

15                 THE WITNESS: The -- X  
16          probably isn't a platform that  
17          students make much use of.

18       BY ATTORNEY PISTILLI:

19           Q.       But if a student -- if a  
20          teacher experienced disruption that they  
21          attributed to X, the teacher should  
22          include it in their answer?

23                 ATTORNEY JACOBSON:

24          Objection. Form. Asked and

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1 answered.

2 THE WITNESS: Well, if,  
3 hypothetically, the -- a teacher  
4 thinks that students are using X  
5 and that's -- causing diversion of  
6 time, then, hypothetically, they  
7 would be including that, that  
8 recognition.

9 But my understanding, based  
10 on the pre-test, is that Facebook,  
11 Instagram, Snapchat, TikTok and  
12 YouTube are the, you know, huge  
13 percentage of the social media  
14 usage. And there may be some  
15 outside that, but the -- you know,  
16 it requires, you know -- well,  
17 never mind.

18 BY ATTORNEY PISTILLI:

19 Q. Are you familiar with  
20 Discord?

21 A. I have heard of it in the  
22 context of gaming, yes.

23 Q. It's a social media  
24 platform, right?

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1 ATTORNEY JACOBSON:

2 Objection. Form.

3 THE WITNESS: I'm not sure.

4 I've never been on Discord.

5 BY ATTORNEY PISTILLI:

6 Q. So you -- you don't know,  
7 sitting here today, one way or the other,  
8 whether Discord is a social media app?

9 ATTORNEY JACOBSON:

10 Objection. Form. And asked and  
11 answered.

12 THE WITNESS: As I say, I've  
13 never been on Discord.

14 BY ATTORNEY PISTILLI:

15 Q. Have you ever heard of  
16 Omegle?

17 A. O --

18 Q. Omegle?

19 A. No.

20 Q. Have you ever heard of Yik  
21 Yak?

22 A. No.

23 Q. There's a lot of social  
24 media apps out there, though, right?

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1 ATTORNEY JACOBSON:

2 Objection to form.

3 THE WITNESS: I'm not sure.

4 BY ATTORNEY PISTILLI:

5 Q. You don't know?

6 A. Well, I know that these are  
7 the five main ones that are used by  
8 students.

9 Q. But whether and to what  
10 extent there are other ones is outside  
11 your expertise?

12 ATTORNEY JACOBSON:

13 Objection. Form.

14 THE WITNESS: My expertise  
15 is in the creating of surveys.  
16 And I think that the listing of  
17 the -- these five platforms  
18 appropriately directs teachers to  
19 think about those platforms and  
20 student use of those platforms.

21 BY ATTORNEY PISTILLI:

22 Q. Among others?

23 A. I think that the way this is  
24 listed -- and, again, it wouldn't be the

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1 first thing that -- or necessarily be the  
2 first thing that the teacher saw. And so  
3 they're going to see a number of  
4 alternative, let's say, disrupting events  
5 or disrupting situations all that are  
6 followed by e.g. and et cetera.

7 And so when they run across  
8 the -- any of the first two that are  
9 listed here, it won't look any different  
10 than the ones that they saw in student  
11 tardiness or unauthorized messaging, that  
12 sort of thing.

13 Q. So when a teacher looks at  
14 this and they see, Student tardiness to  
15 school or class, e.g., disrupting class  
16 when walking in late, bus is running  
17 late, et cetera, a teacher would  
18 understand that there could be other ways  
19 of student tardiness creating disruptions  
20 besides walking in late and buses running  
21 late, correct?

22 ATTORNEY JACOBSON:

23 Objection. Form.

24 THE WITNESS: The -- could



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1           you repeat the question? I'm  
2           sorry.

3       BY ATTORNEY PISTILLI:

4           Q.       Sure.

5                   When a teacher looks at this  
6       survey and sees, Student tardiness to  
7       school or a class, e.g., disrupting class  
8       when walking in late, buses running late,  
9       et cetera, or early departures, they  
10      would understand that student tardiness  
11      might create disruptions other than by  
12      walking in late or buses running late,  
13      correct?

14                   ATTORNEY JACOBSON:

15           Objection to form.

16                   THE WITNESS: I guess that's  
17           possible, yes.

18       BY ATTORNEY PISTILLI:

19           Q.       And then when they see,  
20       Classroom environment issues, e.g.,  
21       uncomfortable seating, poor lighting,  
22       temperature issues, et cetera, they would  
23       understand that there could be classroom  
24       environment issues other than

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1 uncomfortable seating, poor lighting and  
2 temperature issues, correct?

3 ATTORNEY JACOBSON:

4 Objection. Form.

5 THE WITNESS: I -- that's  
6 entirely possible.

7 BY ATTORNEY PISTILLI:

8 Q. So did you make any effort  
9 in your survey to understand whether any  
10 particular features of Facebook,  
11 Instagram, Snapchat, TikTok or YouTube  
12 were causing classroom disruption?

13 A. No. It was the student use  
14 of those platforms.

15 Q. So student use no matter  
16 which features they were using?

17 ATTORNEY JACOBSON:

18 Objection. Form.

19 THE WITNESS: We really  
20 didn't inquire about any specific  
21 features.

22 BY ATTORNEY PISTILLI:

23 Q. And so if the teacher  
24 attributed a disruption to Facebook,

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1 Instagram, Snapchat, TikTok or YouTube,  
2 you included it in your calculations  
3 irrespective of the particular feature  
4 that caused the disruption?

5 ATTORNEY JACOBSON:

6 Objection. Form.

7 THE WITNESS: Again, we  
8 didn't ask about specific  
9 features. So there was no way we  
10 could attribute it to that.

11 BY ATTORNEY PISTILLI:

12 Q. And then, for instance, your  
13 social media disruption would include  
14 disruptions caused by the algorithmic  
15 promotion of addictive engagement?

16 ATTORNEY JACOBSON:

17 Objection to form.

18 THE WITNESS: Whatever that  
19 means.

20 BY ATTORNEY PISTILLI:

21 Q. Are you aware of plaintiffs'  
22 allegations in this lawsuit?

23 A. Yes.

24 Q. And are you aware that one

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1 of the things they allege is that the  
2 defendants' platforms use algorithms to  
3 promote addictive engagement?

4 A. Yes.

5 Q. So when you ask teachers  
6 about social media-related disruption, it  
7 would include disruptions that they  
8 attribute to the algorithmic promotion of  
9 addictive engagement?

10 A. Well, I don't know,  
11 hypothetically, if they attribute it to  
12 any one particular feature or if one  
13 particular feature is causing the  
14 disruption that needs to be dealt with,  
15 so.

16 Q. But irrespective of what the  
17 feature is, if the teacher attributes it  
18 to social media, it's included in your  
19 analysis?

20 A. If the teacher believes that  
21 social media is causing the disruption  
22 that diverts time from -- from teaching,  
23 then I would hope they would include it  
24 here.

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1 Q. And you're aware that  
2 defendants' platforms sometimes send  
3 notifications to users?

4 ATTORNEY JACOBSON:

5 Objection. Form.

6 THE WITNESS: Yeah, I think  
7 I've seen those.

8 BY ATTORNEY PISTILLI:

9 Q. And if a student is  
10 distracted because they receive a  
11 notification during class, that's another  
12 thing that the teacher should include in  
13 their survey response, correct?

14 A. If it causes a disruption  
15 that they need to deal with to -- because  
16 it diverts -- and if it diverts time from  
17 teaching, then I would hope they would  
18 include all of those.

19 Q. Let's look back at  
20 Question 3 again.

21 And do you see where -- the  
22 second question -- and I recognize it's  
23 not always the second question someone  
24 receives, you ask about, Repercussions

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1 from student use of social media outside  
2 of the classroom, e.g., students anxious  
3 or inattentive due to prolonged social  
4 media use, students suffering from sleep  
5 deprivation due to late night social  
6 media use, dealing with student conflicts  
7 stemming from social media use.

8 Do you see that?

9 A. Yes.

10 Q. And when you say something  
11 like "dealing with student conflict  
12 stemming from social media use," you mean  
13 things like, you know, maybe someone is  
14 being bullied by another student and  
15 that's done, in part, through comments or  
16 posts on a social media platform, right?

17 ATTORNEY JACOBSON:

18 Objection to form.

19 THE WITNESS: I mean, that's  
20 certainly one possibility.

21 BY ATTORNEY PISTILLI:

22 Q. Or two students could be  
23 having, like, a war of words with one  
24 another in a -- in a comment section on a

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1 social media post, right?

2 ATTORNEY JACOBSON:

3 Objection. Form.

4 THE WITNESS:

5 Hypothetically, yes.

6 BY ATTORNEY PISTILLI:

7 Q. Now let's talk about some of  
8 these other categories.

9 You refer to things like  
10 students being anxious or inattentive as  
11 repercussions from student use of social  
12 media?

13 A. Those are examples.

14 Q. So you're -- you're drawing  
15 to the teachers' mind a link between  
16 anxiety and inattention and social media  
17 use in the formation of the question,  
18 correct?

19 ATTORNEY JACOBSON:

20 Objection. Form.

21 THE WITNESS: I'm sorry,  
22 could you repeat that?

23 BY ATTORNEY PISTILLI:

24 Q. The question suggests a link

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1 between social media use and anxiety and  
2 inattentiveness, correct?

3 ATTORNEY JACOBSON:

4 Objection. Form.

5 THE WITNESS: I think it  
6 provides examples that -- what  
7 social media could potentially  
8 manifest itself in student  
9 behavior.

10 BY ATTORNEY PISTILLI:

11 Q. But if you wanted to, right,  
12 instead of asking this question, you  
13 could have, for instance, asked, how much  
14 time do you spend dealing with anxiety or  
15 inattentiveness, correct?

16 ATTORNEY JACOBSON:

17 Objection. Form.

18 THE WITNESS: Well, I think  
19 there are a lot of questions we,  
20 you know, could ask.

21 I mean, I think this gets at  
22 the issue we were trying to  
23 measure.

24 BY ATTORNEY PISTILLI:



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1 Q. But rather than asking a  
2 question in a way that presupposes that  
3 social media causes anxiety or  
4 inattention, you could have more  
5 neutrally asked, for example, in the  
6 first instance, about anxiety or  
7 inattention, correct, and then followed  
8 up?

9 ATTORNEY JACOBSON:

10 Objection. Form.

11 THE WITNESS: Well, I'm not  
12 sure how that would -- that would  
13 work and stay parallel with the  
14 other -- other issues.

15 BY ATTORNEY PISTILLI:

16 Q. Well, you could have had --  
17 instead of your second category there,  
18 you could have asked whether disruptions  
19 were caused by students who were anxious  
20 or inattentive; you could have asked  
21 whether disruptions were caused by  
22 students being sleep deprived; you could  
23 have asked whether students were being  
24 disruptive because of conflict, right?

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1 ATTORNEY JACOBSON:

2 Objection. Form. Compound.

3 THE WITNESS: And then what?

4 BY ATTORNEY PISTILLI:

5 Q. And then if, and only if,  
6 they said yes asked whether, in fact, the  
7 teachers attributed any of that to social  
8 media?

9 A. Sounds like a pretty leading  
10 question. I don't think I would do  
11 something like that.

12 Q. Well, you don't think it's  
13 leading to put in the question itself a  
14 linkage between social media use and all  
15 of these harms?

16 ATTORNEY JACOBSON:

17 Objection. Form.

18 THE WITNESS: No, I don't  
19 think that's leading.

20 BY ATTORNEY PISTILLI:

21 Q. You don't think it would be  
22 more neutral to ask about the harms  
23 without, in the question itself, tying  
24 the harms to social media?

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1 ATTORNEY JACOBSON:

2 Objection. Form.

3 THE WITNESS: No, I think --

4 I think the way we asked it was  
5 neutral and essentially surrounded  
6 by, you know, a bunch of other  
7 similar types of issues.

8 BY ATTORNEY PISTILLI:

9 Q. Let me ask you this: What,  
10 if anything, did you do to determine  
11 whether teachers have the ability to  
12 reliably gauge the cause of a student's  
13 sleep deprivation?

14 ATTORNEY JACOBSON:

15 Objection. Form.

16 THE WITNESS: Teachers get  
17 to know their students. And, you  
18 know, it's -- and they talk to  
19 their students. They care about  
20 their students.

21 And from the pre-test  
22 interviews, it was clear that they  
23 were able to, in some cases,  
24 attribute these symptoms to social

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1 media and in other cases not.

2 BY ATTORNEY PISTILLI:

3 Q. What, if anything other than  
4 the pre-testing, did you do to determine  
5 whether teachers are able to reliably  
6 determine the cause of a student's sleep  
7 deprivation?

8 ATTORNEY JACOBSON:

9 Objection. Form.

10 THE WITNESS: The -- if a  
11 teacher believes that the sleep  
12 deprivation is due to overuse of  
13 social media, then they'll select  
14 this alternative.

15 And, you know, if they  
16 don't, if they think it's because  
17 of an unstable home environment  
18 or, you know, the -- they'll --  
19 they'll recognize that.

20 BY ATTORNEY PISTILLI:

21 Q. But my question is, what, if  
22 anything, did you do to determine whether  
23 those teacher-reported beliefs are  
24 reliable?

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1 ATTORNEY JACOBSON:

2 Objection. Form.

3 THE WITNESS: I think that  
4 the pre-test interviews we did  
5 made it clear that the teachers  
6 could answer this question  
7 appropriately.

8 BY ATTORNEY PISTILLI:

9 Q. Did you ask teachers in the  
10 pre-test interview whether they believed  
11 that they can reliably determine the  
12 reason that a given student is sleep  
13 deprived on a given day?

14 ATTORNEY JACOBSON:

15 Objection. Form.

16 THE WITNESS: We did not ask  
17 that specific question.

18 BY ATTORNEY PISTILLI:

19 Q. Did you ask them, in a  
20 pre-test interview, whether they believed  
21 that they could reliably determine the  
22 reason that a student was anxious or  
23 inattentive on a given day?

24 ATTORNEY JACOBSON:

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1           Objection to form.

2                   THE WITNESS:   Again, it's a  
3           question of the teacher getting to  
4           know their student and  
5           understanding what's causing  
6           particular behaviors.

7   BY ATTORNEY PISTILLI:

8           Q.       Well, my question was  
9           different, though, sir.

10                   It was, did you ask the  
11           teachers in the pre-test interview  
12           whether they believe that they could  
13           reliably determine the reason a student  
14           was anxious or inattentive on a given  
15           day?

16                   ATTORNEY JACOBSON:

17           Objection.   Form.

18                   THE WITNESS:   We didn't ask  
19           that specific question, no.

20   BY ATTORNEY PISTILLI:

21           Q.       And did you ask them whether  
22           they believed that they could reliably  
23           determine the reason for conflict between  
24           students in a given instance?

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1 ATTORNEY JACOBSON:

2 Objection to form.

3 THE WITNESS: The -- I mean,  
4 it's the same kind of an answer.

5 As the teachers were going  
6 through these -- the list of items  
7 and they could say, oh, yeah, that  
8 happened or no, that doesn't  
9 happen.

10 So while we didn't ask the  
11 teachers specifically that  
12 question, it was clear from the  
13 pre-test that they were -- they  
14 understood -- understood their  
15 students.

16 BY ATTORNEY PISTILLI:

17 Q. The pre-test for which you  
18 have no records?

19 ATTORNEY JACOBSON:

20 Objection. Form.

21 THE WITNESS: Correct.

22 ATTORNEY PISTILLI: Why  
23 don't we take a quick break? I  
24 think I'm done. I think my

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1 colleagues may have a couple of  
2 minutes.

3 VIDEO TECHNICIAN: The time  
4 is 4:13 p.m., and we are off the  
5 record.

6 - - -

7 (Whereupon, a brief recess  
8 was taken.)

9 - - -

10 (Whereupon, Exhibit  
11 Klein-24, Klein000001-0005,  
12 Invoices, was marked for  
13 identification.)

14 - - -

15 VIDEO TECHNICIAN: The time  
16 is 4:36 p.m., and we are on the  
17 record.

18 ATTORNEY PISTILLI:  
19 Mr. Klein, thank you for your time  
20 today. I have no further  
21 questions for you at this time,  
22 and I'm going to pass the witness  
23 to my co-counsel.

24 - - -



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EXAMINATION

- - -

BY ATTORNEY SHAHIDPOUR:

Q. Good afternoon, Mr. Klein.

A. Good afternoon.

Q. My name is Faraz Shahidpour.

I'm with Kirkland and Ellis, and I  
represent Snap, the maker of Snapchat.

I've handed you what's been  
marked as Exhibit-24.

Have you seen these  
documents before?

A. Yes.

Q. And does Exhibit-24 reflect  
all the payment and compensation you've  
received in connection with your work in  
this litigation?

A. Not my compensation. But  
this is the -- these are the invoices  
that Applied Marketing Science sent for  
my work on this case through July of this  
year.

So this is -- this isn't my  
compensation, this is what the firm has

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1 billed for my time.

2 Q. Got it.

3 So does Exhibit-24 reflect  
4 all of the payment or compensation that  
5 AMS has received in connection with your  
6 work in this litigation through July  
7 2025?

8 A. With my work, yes.

9 Q. Do you recall testifying  
10 earlier that your team conducted some  
11 pre-test interviews in connection with  
12 the surveys --

13 A. Yes.

14 Q. -- that -- excuse me -- that  
15 the surveys that you sent to teachers  
16 within the school districts?

17 A. Yes.

18 Q. And you listened to those  
19 pre-test interviews after?

20 A. I listened to, I believe,  
21 six of the 23.

22 Q. So you listened to six of  
23 the 23 pre-test interviews that your team  
24 conducted with teachers in anticipation

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1 of the survey; is that right?

2 A. As a -- as a pre-test of the  
3 survey.

4 Q. And then do you also recall  
5 testifying earlier that it's your  
6 understanding that TikTok, Facebook,  
7 Instagram, Snapchat and YouTube are the  
8 only platforms that students use?

9 A. I think I said that they  
10 were the primary platforms that students  
11 use. They may peripherally use others at  
12 various times, but these are the main  
13 ones that are used by students of this  
14 age group.

15 Q. And is your basis that those  
16 five platforms are the primary platforms  
17 that students use your having listened to  
18 the six pre-test interviews?

19 ATTORNEY JACOBSON:

20 Objection. Form.

21 Mischaracterizes testimony.

22 THE WITNESS: I'm not sure I  
23 understand your question.

24 BY ATTORNEY SHAHIDPOUR:

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1 Q. So you -- is your only basis  
2 for asserting that TikTok, Facebook,  
3 Instagram, Snapchat and YouTube are the  
4 primary platforms that students use the  
5 six pre-test interviews that you listened  
6 to?

7 ATTORNEY JACOBSON:

8 Objection. Form.

9 THE WITNESS: No. It  
10 certainly came from looking at the  
11 original complaint, from speaking  
12 with counsel and kind of the --  
13 sort of informal exploratory  
14 interviewing with friends --  
15 friends and family that is common  
16 before any survey is undertaken in  
17 some field that we don't have  
18 extensive experience in.

19 BY ATTORNEY SHAHIDPOUR:

20 Q. So when you say -- excuse  
21 me.

22 When you say "informal  
23 exploratory interviewing with friends and  
24 family," are you referring to your own

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1 friends and family?

2 A. Friends and family is sort  
3 of a catchall term for, does anyone in  
4 the company know high school teachers or  
5 middle school teachers and do you have  
6 kids in high school or middle school  
7 and -- so that we can talk about issues  
8 related to social media just informally  
9 to inform ourselves of the -- what the  
10 landscape is like.

11 Q. And so who -- what are the  
12 names of the friends and family that you  
13 spoke with?

14 A. I don't have those names.

15 Q. Are they recorded anywhere?

16 A. Probably not.

17 Q. Were there any notes taken  
18 from these friends and family interviews?

19 A. Not that I'm aware of.

20 Q. Is there anyone who would be  
21 aware of whether notes exist from those  
22 interviews?

23 A. The -- it would not be  
24 typical to save notes from those kinds of

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1 informal -- informal discussions.

2 These weren't, you know,  
3 hour-long kinds of interviews scheduled  
4 with -- where we didn't pay an incentive  
5 or anything like that.

6 Again, it was just kind of  
7 the informal, as I said, exploratory kind  
8 of stuff that we would undertake in -- in  
9 any situation before -- if we were  
10 working in a field that we didn't have  
11 extensive experience in already.

12 Q. Okay. Do you have a  
13 Snapchat account?

14 A. No.

15 Q. Have you ever used Snapchat?

16 A. Not to my knowledge.

17 Q. Do you have a Facebook  
18 account?

19 A. I do have a Facebook  
20 account.

21 Q. How long have you had a  
22 Facebook account?

23 A. I'd say probably eight  
24 years -- I'm trying to picture the -- I

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1 know the picture that I'm using was taken  
2 in Patagonia, and I'm trying to think  
3 when I was there.

4 So it was probably from  
5 about ten years ago.

6 Q. And how frequently do you  
7 use Facebook?

8 ATTORNEY JACOBSON:

9 Objection. Form.

10 THE WITNESS: Almost never.

11 BY ATTORNEY SHAHIDPOUR:

12 Q. How frequently did you use  
13 Facebook when you first made your  
14 account?

15 ATTORNEY JACOBSON:

16 Objection. Form.

17 THE WITNESS: Very little.

18 I mean, it was -- I thought it --  
19 I thought it would be useful. It  
20 wasn't.

21 BY ATTORNEY SHAHIDPOUR:

22 Q. How many hours a day did you  
23 use Facebook when you first downloaded  
24 it?

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1           A.       Five minutes. But not --  
2       that wouldn't have been an everyday type  
3       of occurrence.

4           Again, it was -- it just --  
5       it seemed like something that was  
6       appropriate to do, but I didn't find any  
7       use for it.

8           Q.       Do you have an Instagram  
9       account?

10          A.       I do.

11          Q.       Since when?

12          A.       That's a lot more recent.  
13       The last two or three years.

14          Q.       And how frequently do you  
15       use Instagram?

16          A.       Maybe once a month.

17          Q.       And what do you do on  
18       Instagram when you use it?

19          A.       Kind of keep track of my  
20       grandkids. They tend to post more --  
21       more frequently.

22          Q.       Do you have a TikTok  
23       account?

24          A.       I don't think so.



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1 Q. Have you ever used TikTok?

2 A. My granddaughter has shown  
3 me some TikTok videos. But beyond that,  
4 no, I haven't used it.

5 Q. She sent them to you or she  
6 has shown --

7 A. No. She showed me. And she  
8 likes to produce them herself, dance  
9 moves and stuff.

10 Q. And do you have a YouTube  
11 account?

12 A. I access YouTube -- videos  
13 on YouTube. I don't know whether I have  
14 an account -- whether that means I have  
15 an account or not.

16 Q. And how long have you been  
17 accessing videos on YouTube?

18 A. For quite a while. I mean,  
19 probably at least ten years.

20 Q. It's not possible to derive  
21 the amount of time diverted from  
22 instruction, if any, due to Snapchat in  
23 particular from any of your survey  
24 results in this litigation, right?

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1 ATTORNEY JACOBSON:

2 Objection. Form.

3 THE WITNESS: Well, the  
4 survey clearly identifies Snapchat  
5 as one of the social media  
6 platforms that teachers were  
7 responding to.

8 So to that extent, we have  
9 information about diverted time  
10 due to those five platforms that  
11 were named, but not specific to  
12 any one of those five platforms.

13 BY ATTORNEY SHAHIDPOUR:

14 Q. Well, you have information  
15 about social media in particular and  
16 teachers responded using -- by --  
17 teachers responded with the understanding  
18 in the question that social media  
19 encompassed more than just those five  
20 platforms, right?

21 ATTORNEY JACOBSON:

22 Objection. Form.

23 Mischaracterizes testimony.

24 THE WITNESS: I don't think

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1           that teachers necessarily thought  
2           about the social media platforms  
3           as being broader than those five.

4                   But those five are clearly  
5           identified and make up the, I  
6           think, bulk of student use and the  
7           resulting disruption of classes  
8           that need to be dealt with.

9   BY ATTORNEY SHAHIDPOUR:

10           Q.       So if, say, your survey  
11   results showed that 20 percent of high  
12   school teachers' time in a given district  
13   in a given year was diverted due to  
14   students' social media use, you wouldn't  
15   be able to derive the exact percent that  
16   would be attributable -- attributable to  
17   a particular one of defendants'  
18   platforms, right?

19                   ATTORNEY JACOBSON:

20           Objection.   Form.

21                   THE WITNESS:   We -- we  
22   measured the social media as a --  
23   as a unit and did not break out  
24   individual platforms.

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1 BY ATTORNEY SHAHIDPOUR:

2 Q. Right. I understand what  
3 you measured. I'm trying to understand  
4 what can be derived from your  
5 measurement.

6 Is it possible to derive  
7 particular percentages of time diverted  
8 due to student use of any particular one  
9 of the platforms?

10 ATTORNEY JACOBSON:

11 Objection. Form. Asked and  
12 answered.

13 THE WITNESS: Not to any one  
14 specific platform from my data.

15 My understanding and belief  
16 is that there's other data that  
17 can be used to allocate student  
18 usage across those platforms. But  
19 that wasn't part of my assignment.

20 BY ATTORNEY SHAHIDPOUR:

21 Q. And when you say "other  
22 data," does that other data to which  
23 you're referring include teacher survey  
24 data that you conducted?

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1 A. No.

2 Q. Did you consider any  
3 internal Snap documents in formulating  
4 your opinions?

5 A. I don't think I was exposed  
6 to any internal Snap documents.

7 Q. You never conducted a survey  
8 containing any questions that sought to  
9 measure Snapchat usage in particular,  
10 have you?

11 ATTORNEY JACOBSON:

12 Objection. Form.

13 THE WITNESS: Not Snapchat  
14 usage in itself, no. Certainly,  
15 included, again, as one of the  
16 five services -- platforms.

17 BY ATTORNEY SHAHIDPOUR:

18 Q. What did you do, if  
19 anything, to learn about how the Snapchat  
20 app works in connection with providing  
21 your opinions in this case?

22 A. As I think I said before, I  
23 don't have a Snap account -- Snapchat  
24 account. I really don't know much about

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1     Snapchat.

2             Q.       You didn't undertake to  
3     learn about the app when you designed the  
4     survey?

5                     ATTORNEY JACOBSON:

6             Objection to form.

7                     THE WITNESS:   That's  
8             correct.   It wasn't necessary in  
9             determining the total average of  
10            time diverted from teaching by  
11            social media platforms.

12     BY ATTORNEY SHAHIDPOUR:

13             Q.       And you didn't undertake to  
14     learn about the Snapchat app in forming  
15     your opinions based on the results of the  
16     surveys?

17             A.       I think, as I said, I saw --  
18     it wasn't part of my assignment.   It  
19     wasn't necessary.

20             Q.       What is your income as  
21     chairman emeritus at Applied Marketing  
22     Science?

23                     ATTORNEY JACOBSON:

24             Objection.   Form.   And scope.

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1 THE WITNESS: I don't think  
2 I'm going to answer that. I  
3 wouldn't want that information on  
4 the public record.

5 BY ATTORNEY SHAHIDPOUR:

6 Q. Do you earn any income  
7 outside of your salary at Applied  
8 Marketing Science?

9 A. Not from employment  
10 anywhere, no.

11 Q. From anywhere else?

12 A. Yeah. I mean, you know,  
13 Medicare, investments, that sort of  
14 stuff.

15 Q. Have you reached out to any  
16 public health authorities to share the  
17 opinions about social media that you're  
18 offering in this litigation?

19 A. No. My understanding is  
20 this is to be confidential. I wouldn't  
21 presume to publicize it myself.

22 Q. Prior to this litigation,  
23 did you have any familiarity with the  
24 specific school district plaintiffs for

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1 which you were retained to conduct  
2 surveys?

3 A. No -- no relevant contact or  
4 information. I grew up in Atlanta, so  
5 DeKalb is -- you know, I know about the  
6 DeKalb school system.

7 But not -- I certainly  
8 didn't have any contact with them.

9 Q. You didn't go to -- you  
10 didn't go to a school within the DeKalb  
11 County system?

12 A. No.

13 Q. Do you believe that social  
14 media should be banned?

15 ATTORNEY JACOBSON:

16 Objection. Form.

17 THE WITNESS: I don't really  
18 have an opinion about that.

19 BY ATTORNEY SHAHIDPOUR:

20 Q. Do you --

21 A. Certainly not as an expert.

22 Q. Sorry. I didn't mean to cut  
23 you off.

24 Do you believe that Snapchat



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1 should be banned?

2 ATTORNEY JACOBSON:

3 Objection. Form.

4 THE WITNESS: I really don't  
5 have an expert opinion on whether  
6 Snapchat should be banned.

7 ATTORNEY SHAHIDPOUR: Okay.  
8 Thank you, Mr. Klein. I have no  
9 further questions. But I'll open  
10 it for my colleagues.

11 ATTORNEY WHITELEY: Are we  
12 okay if I question over here?  
13 Thank you.

14 - - -

15 EXAMINATION

16 - - -

17 BY ATTORNEY WHITELEY:

18 Q. Good afternoon, Mr. Klein.

19 A. Good afternoon.

20 Q. My name is Daniel Whiteley.

21 I represent the Google and YouTube  
22 defendants in this case.

23 And I have a few more  
24 questions for you, okay?

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1 A. Okay.

2 Q. You're still good to keep  
3 answering questions?

4 A. Sure.

5 Q. All right. During that last  
6 segment of questioning, you said, my  
7 understanding and belief is that there's  
8 other data that can be used to allocate  
9 student usage across those platforms.

10 What data are you referring  
11 to in that answer?

12 A. I was instructed to focus on  
13 social media use for these five platforms  
14 specifically as an aggregate and told  
15 that I didn't have to worry about trying  
16 to allocate it by individual defendant.

17 So I guess I was making the  
18 assumption that someone else was going to  
19 be worrying about that.

20 Q. Okay. So no one told you  
21 specifically, you know, the school  
22 districts themselves have data that  
23 allocates the percentage of student usage  
24 across those platforms?

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1 ATTORNEY JACOBSON:

2 Objection. Form.

3 THE WITNESS: That's right.

4 No one told me that.

5 BY ATTORNEY WHITELEY:

6 Q. No one told you another  
7 expert in this litigation has data that  
8 can be used to allocate student usage  
9 across those platforms?

10 ATTORNEY JACOBSON:

11 Objection. Form.

12 THE WITNESS: No, I wasn't  
13 told that. I mean, it seemed  
14 logical. But I may be getting  
15 outside of my lane in assuming  
16 that.

17 BY ATTORNEY WHITELEY:

18 Q. Regardless, your scope of  
19 work was to look at all of these  
20 platforms together, right?

21 A. That's correct.

22 Q. And I believe earlier you  
23 talked about AMS having profit sharing;  
24 is that right?

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1 A. Yes.

2 Q. And you receive a share of  
3 the profits from AMS on a yearly basis?

4 A. As do all the employees.

5 Q. Okay. What is your share of  
6 AMS's yearly profits?

7 A. I have no idea.

8 Q. How is the percentage of  
9 profit sharing determined at AMS?

10 A. There's a committee of  
11 principals that meets to decide what the  
12 profit sharing percentage will be and  
13 that -- and then I -- they tell me.

14 Q. Safe to say you're not on  
15 that committee?

16 A. I'm not on that committee.  
17 I used to be, but.

18 Q. Okay. When did you stop  
19 being on that committee?

20 A. About eight -- eight years  
21 ago; eight to ten years ago.

22 Q. And you said earlier you're  
23 not comfortable sharing your income.

24 If I represent to you that

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1 this transcript is confidential and will  
2 not be publicly available, would that  
3 change your willingness to answer that  
4 question?

5 ATTORNEY JACOBSON:

6 Objection. Form.

7 THE WITNESS: I'm sorry, I  
8 really don't feel comfortable with  
9 answering that question.

10 BY ATTORNEY WHITELEY:

11 Q. Even if it's not in the  
12 public record? If this transcript is not  
13 in the public record?

14 A. Even in that situation.

15 Q. Other than the pre-test of  
16 the survey and the informal interviews  
17 you described during my last colleagues'  
18 questionings, do you have any other basis  
19 for your assertion that the five  
20 defendant platforms are the platforms  
21 that are most used by students?

22 ATTORNEY JACOBSON:

23 Objection. Form.

24 THE WITNESS: Well, I guess

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1           did you -- from discussions with  
2           counsel as well who, it's my  
3           understanding, have access to  
4           other data that I don't.

5       BY ATTORNEY WHITELEY:

6           Q.       Anything else that forms the  
7           basis for your assertion that the five  
8           defendant platforms are the ones that are  
9           most used by students?

10           ATTORNEY JACOBSON:

11           Objection.   Form.   And asked and  
12           answered.

13           THE WITNESS:   Not really,  
14           no.

15       BY ATTORNEY WHITELEY:

16           Q.       During your pre-test  
17           interviews, did teachers tell you what  
18           percentage of students in their school  
19           use Snapchat?

20           ATTORNEY JACOBSON:

21           Objection.   Form.

22           THE WITNESS:   No.   We didn't  
23           ask about the usage of individual  
24           platforms.

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1 BY ATTORNEY WHITELEY:

2 Q. Did they tell you what  
3 percentage of students in their school  
4 use any of the defendants' platforms?

5 ATTORNEY JACOBSON:

6 Objection to form.

7 THE WITNESS: No. Although,  
8 I would be surprised if it was  
9 much less than 100 percent.

10 BY ATTORNEY WHITELEY:

11 Q. Why do you say that?

12 A. Again, my grandchildren and  
13 their extensive use, as well as their  
14 parents.

15 Q. Do you have any other basis  
16 for saying that you would be surprised  
17 that less than 100 percent of students  
18 use defendants' platforms?

19 ATTORNEY JACOBSON:

20 Objection. Form.

21 THE WITNESS: Again, sort of  
22 it's more of the common knowledge  
23 idea.

24 BY ATTORNEY WHITELEY:

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1 Q. You were asked whether you  
2 reviewed any internal documents from  
3 Snap.

4 Have you reviewed any  
5 internal documents from any of the  
6 defendant companies in this case?

7 A. Not to my knowledge, no.

8 Q. Can you give me the names of  
9 any individuals that you interviewed as a  
10 part of the pre-test?

11 A. No.

12 Q. Can you tell me what school  
13 districts these individuals work in?

14 A. Not as I sit here. But they  
15 weren't any of the 12 bellwether  
16 districts.

17 Q. Right. And do you know the  
18 names of any of the districts, with the  
19 understanding that they're not among the  
20 12 that you originally offered reports  
21 for?

22 A. I don't have that  
23 information. I don't think I've ever --  
24 I don't think I've ever seen that



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1 information.

2 Q. How long were the pre-test  
3 interviews?

4 A. They generally ran, like, 30  
5 minutes.

6 Q. And why did you not record  
7 or take notes of these interviews?

8 A. We didn't need to.

9 Q. Why did you not need to?

10 A. Because we were in there in  
11 the moment and listening to them.

12 Q. But now, sitting here today,  
13 I don't have any document that I can look  
14 at to verify what was said in these  
15 interviews. And so I can't verify what  
16 they said about how much students are  
17 using these platforms in their districts.

18 Do you agree?

19 ATTORNEY JACOBSON:

20 Objection. Form.

21 THE WITNESS: Yes, I agree  
22 with that statement.

23 BY ATTORNEY WHITELEY:

24 Q. And I believe you said you

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1 have kids and grandkids, right?

2 A. Yes.

3 Q. When your children were in  
4 high school and middle school, do you  
5 know if any of the five defendant  
6 platforms were operating?

7 A. They weren't.

8 Q. They were not?

9 A. They were not.

10 Q. Have you ever conducted a  
11 survey of teachers about their use of  
12 YouTube during instruction time?

13 A. No.

14 Q. Are you aware of any studies  
15 about teachers' use of YouTube during  
16 instruction time?

17 A. No.

18 ATTORNEY WHITELEY: Thank  
19 you, Mr. Klein. I have no further  
20 questions at this time.

21 Do we want to go off the  
22 record?

23 ATTORNEY HORVATH: I have  
24 questions.

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1                   ATTORNEY WHITELEY: We're  
2                   getting a bad echo. Let's go off  
3                   the record and try to figure that  
4                   out.

5                   VIDEO TECHNICIAN: The time  
6                   is 5:02 p.m. We are going off the  
7                   record.

8                   - - -

9                   (Whereupon, a brief recess  
10                  was taken.)

11                  - - -

12                  VIDEO TECHNICIAN: The time  
13                  is 5:03 p.m., and we are on the  
14                  record.

15                  - - -

16                  EXAMINATION

17                  - - -

18                  BY ATTORNEY HORVATH:

19                  Q.       Mr. Klein, my name is Lisa  
20                  Horvath. I am here on behalf of TikTok.

21                  Are you ready to proceed?

22                  A.       Yes, I am.

23                  Q.       The good news is I have only  
24                  a few follow-up questions.

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1 Earlier in your deposition,  
2 you were asked questions about the  
3 different -- or the ability of the  
4 teachers to identify what their students  
5 were using and what was causing  
6 disruptions in the classroom.

7 Do you recall that  
8 testimony?

9 ATTORNEY JACOBSON:

10 Objection. Form.

11 THE WITNESS: Well, I think  
12 I testified about that they were  
13 able to determine that it was  
14 social media use, not necessarily  
15 the specific platform they were  
16 using.

17 BY ATTORNEY HORVATH:

18 Q. Right. And I think you said  
19 you were able to determine that because  
20 teachers know their students, correct?

21 A. No. I think that was in the  
22 context of teachers being able to  
23 attribute certain behaviors of students  
24 to social media use.

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1 Q. Okay. And the reason that  
2 you determined teachers could determine  
3 certain behaviors of students were caused  
4 by social media was because you believe  
5 teachers know their students?

6 ATTORNEY JACOBSON:

7 Objection. Form.

8 BY ATTORNEY HORVATH:

9 Q. Is that correct?

10 A. That's what teachers told  
11 us, yes.

12 Q. Okay. And how many students  
13 does -- did each teacher answering the  
14 survey have from year to year?

15 A. That wasn't one of the  
16 questions we asked.

17 Q. Okay. So you don't know if  
18 the teacher had 30 students all day long  
19 or had 60 students in five different  
20 class periods, correct?

21 ATTORNEY JACOBSON:

22 Objection. Form.

23 THE WITNESS: As -- as I  
24 said, we don't have any

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1 information on the number of  
2 students that each teacher  
3 interacted with.

4 BY ATTORNEY HORVATH:

5 Q. So the answer to my question  
6 is, yes, you have no idea if teachers  
7 were with their students all day or part  
8 of a day, correct?

9 A. That's correct.

10 Q. And you don't know if the  
11 classroom size was 10 students, 20  
12 students or 50 students, correct?

13 ATTORNEY JACOBSON:

14 Objection. Form. And asked and  
15 answered.

16 THE WITNESS: That's  
17 correct. We didn't ask any  
18 questions about that.

19 BY ATTORNEY HORVATH:

20 Q. And you would agree that in  
21 addition to there being different teacher  
22 demographics, there are also differences  
23 in student demographics, correct?

24 ATTORNEY JACOBSON:

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1           Objection.    Form.

2                   THE WITNESS:   When you say  
3           "student demographics," what are  
4           you referring to?

5   BY ATTORNEY HORVATH:

6           Q.       I'm referring to things like  
7           family income level, gender --

8           A.       There's clearly --

9           Q.       -- academic background,  
10          interests?

11          A.       There's clearly differences  
12          by student -- in students in those -- on  
13          those dimensions.

14          Q.       Okay. And we don't have any  
15          information from your survey regarding  
16          the demographics of the students for the  
17          teachers who answered the survey,  
18          correct?

19                   ATTORNEY JACOBSON:

20          Objection.    Form.

21                   THE WITNESS:   Not from my  
22          survey. But I'm -- it's my  
23          understanding that the  
24          demographics of the school

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1 districts are -- are public  
2 knowledge.

3 BY ATTORNEY HORVATH:

4 Q. Well, you can have different  
5 demographics within a single school  
6 district from school to school, can't  
7 you?

8 ATTORNEY JACOBSON:

9 Objection. Form.

10 THE WITNESS: Of course.

11 BY ATTORNEY HORVATH:

12 Q. And do we have -- or can you  
13 tell from your survey if there were any  
14 schools within a district who provided no  
15 survey responses?

16 A. Not from my survey, no.

17 Q. Okay. So it's possible that  
18 there are schools within each district  
19 that provided no responses to the survey,  
20 true?

21 ATTORNEY JACOBSON:

22 Objection. Form.

23 THE WITNESS:

24 Hypothetically, that's possible,



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1           yes.

2       BY ATTORNEY HORVATH:

3           Q.       Okay. You don't know one  
4       way or the other, correct?

5           ATTORNEY JACOBSON:

6           Objection. Form. And asked and  
7       answered.

8           THE WITNESS: As I said, we  
9       didn't -- we don't have data on  
10      which school each individual  
11      respondent taught at.

12      BY ATTORNEY HORVATH:

13           Q.       And so it's possible that we  
14      have zero responses from some of the  
15      schools in the district, correct?

16           ATTORNEY JACOBSON:

17           Objection. Form.

18           THE WITNESS: That's  
19      possible.

20      BY ATTORNEY HORVATH:

21           Q.       Did I hear you say that no  
22      surveys were sent to teachers unless they  
23      were currently employed by the district  
24      at the time of the survey?

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1 ATTORNEY JACOBSON:

2 Objection. Form.

3 THE WITNESS: That's  
4 correct.

5 BY ATTORNEY HORVATH:

6 Q. So there were no surveys  
7 sent to teachers who were employed in  
8 2014 but were not employed, at the time  
9 of the survey, by the district, correct?

10 A. Yes, that -- well, that's  
11 correct. I think it would have been  
12 extraordinarily difficult to collect that  
13 kind of a sample.

14 Q. Difficult or not, it wasn't  
15 done, fair?

16 ATTORNEY JACOBSON:

17 Objection. Form.

18 THE WITNESS: We only  
19 interviewed people who were  
20 full-time teachers currently.  
21 The -- yeah, that's who we  
22 interviewed.

23 BY ATTORNEY HORVATH:

24 Q. Okay. And then when you

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1 were performing the analysis of the data,  
2 you looked at different response rates  
3 that were reflected in Appendix E for  
4 each of your school district reports,  
5 correct?

6 A. I just want to make sure I  
7 understand what Appendix E was -- or  
8 remind myself.

9 That was the response  
10 statistics. Yes. And we reported those  
11 for each of the school districts.

12 Q. Right. And under those  
13 response statistics, you did not include  
14 a line that reflected the response rate  
15 of usable survey responses to the total  
16 number of surveys, right?

17 ATTORNEY JACOBSON:

18 Objection.

19 BY ATTORNEY HORVATH:

20 Q. You provide that percentage?

21 ATTORNEY JACOBSON:

22 Objection. Form.

23 THE WITNESS: I'm not sure I  
24 understand what -- what I --

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1 BY ATTORNEY HORVATH:

2 Q. Sure. Let me see if I can  
3 do a better job.

4 The last line in Appendix E  
5 is a response rate.

6 Do you see that?

7 A. Yes.

8 Q. And the formula you noted  
9 for the response rate was to take Line E,  
10 which is the total responding as the  
11 numerator, and use Line A as the  
12 denominator, Line A being the number of  
13 invitations sent, right?

14 A. Correct.

15 Q. So you got to that  
16 percentage by dividing the total  
17 responding by the total number of surveys  
18 sent, correct?

19 A. Correct.

20 Q. You did not include the  
21 percentages for the actual completed  
22 surveys, Line B, divided -- or, actually,  
23 it would be -- yeah, Line B divided by  
24 the number of invitations sent, right?

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1 ATTORNEY JACOBSON:

2 Objection. Form.

3 THE WITNESS: No, we didn't  
4 calculate that percentage. It's  
5 fairly straightforward.

6 BY ATTORNEY HORVATH:

7 Q. Okay. But  
8 straightforward -- if you wanted to find  
9 out the usable response rate, that's what  
10 you would do; you would divide Line B by  
11 Line A in each of your Appendix Es,  
12 correct?

13 ATTORNEY JACOBSON:

14 Objection. Form.

15 THE WITNESS: If -- if  
16 that's what you wanted to do.  
17 That's not what would typically be  
18 done, but.

19 BY ATTORNEY HORVATH:

20 Q. And if you wanted to look at  
21 the percentage of teachers who could  
22 respond from a decade ago versus the  
23 number of total surveys sent, the way to  
24 do that math would be to take the number

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1 of teachers who answered from 2014 and  
2 divide that by the total number of  
3 surveys sent, correct?

4 A. That sounds reasonable.

5 Q. That would be just simple  
6 math, right?

7 A. Yes.

8 Q. And you did not include that  
9 percentage on your Appendix E, did you?

10 A. No. But as you pointed out,  
11 it's a fairly straightforward  
12 calculation.

13 Q. Is there a reason you did  
14 not provide that information on  
15 Appendix E?

16 A. Because it's not typically  
17 reported in survey research.

18 We didn't hide the data. I  
19 mean, as you point out, it's easy enough  
20 to calculate.

21 Q. We were talking earlier  
22 about event calendars.

23 Do you recall that  
24 testimony?

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1 A. Yes.

2 Q. Is the only purported  
3 anchoring event that is included in your  
4 survey the pandemic?

5 ATTORNEY JACOBSON:

6 Objection. Form.

7 THE WITNESS: Well, the --  
8 there's an anchor that's created  
9 by their estimate of the current  
10 usage or current disruption rate.  
11 And so that becomes one anchor.

12 And the -- then the COVID  
13 pandemic is a second.

14 And we also asked them, when  
15 they first started teaching, what  
16 was the disruptions due to social  
17 media use.

18 BY ATTORNEY HORVATH:

19 Q. For the teachers that  
20 answered with information from 2014, the  
21 pandemic was six years after the 2014  
22 timeframe, correct?

23 A. Yes.

24 Q. And just to class the loop

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1 on the surveys that were not sent to all  
2 the teachers that were there in 2014, is  
3 the reason that was not done was just  
4 that it would be difficult?

5 ATTORNEY JACOBSON:

6 Objection. Form.

7 THE WITNESS: The -- well,  
8 first of all, we wouldn't know how  
9 to reach -- reach them. The --  
10 and, you know, they wouldn't be  
11 able to have the same kind of  
12 anchoring that teachers that are  
13 there now have in looking back.

14 So it did not seem that a  
15 survey that was directed at  
16 teachers who, you know, maybe  
17 retired ten years ago would yield  
18 any kind of data that would be  
19 useful.

20 BY ATTORNEY HORVATH:

21 Q. It's my understanding you're  
22 refusing to answer any questions  
23 regarding your current salary, correct?

24 A. That's correct.



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1 ATTORNEY JACOBSON:

2 Objection. Form.

3 BY ATTORNEY HORVATH:

4 Q. What percentage of revenue  
5 from Applied -- from Applied Marketing --

6 A. Science.

7 Q. -- Science, what percentage  
8 of revenue from Applied Marketing  
9 Science, Inc., is related to surveys done  
10 for litigation?

11 A. So I don't -- I'm -- that's  
12 not something that's -- that's published  
13 for the -- internally. My understanding  
14 is that it has generally been about 60 to  
15 70 percent.

16 ATTORNEY HORVATH: I'll pass  
17 the witness.

18 ATTORNEY JACOBSON: All  
19 right. If all defense counsel  
20 have gone, I have just a couple of  
21 questions for you, Mr. Klein.

22 - - -

23 EXAMINATION

24 - - -

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1 BY ATTORNEY JACOBSON:

2 Q. As you know, my name is  
3 Jordan Jacobson. I represent plaintiffs  
4 in this matter.

5 You've offered expert  
6 opinions in litigation before this case,  
7 correct?

8 A. That's correct.

9 Q. And in approximately how  
10 many cases have you served as an expert  
11 witness?

12 A. I've served as an expert  
13 witness in several hundred cases. I've  
14 provided testimony in about 100 cases.

15 Q. And do you know if there  
16 were Daubert motions submitted to exclude  
17 your testimony in those hundreds of cases  
18 where you've served as an expert?

19 A. Yes.

20 Q. And are you aware of any of  
21 those Daubert motions being granted and  
22 your testimony being excluded?

23 A. No, none of them were  
24 granted. And my testimony has never been

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1 excluded or limited in any way.

2 ATTORNEY JACOBSON: No  
3 further questions from me.

4 ATTORNEY PISTILLI: Just a  
5 couple quick follow-ups.

6 - - -

7 EXAMINATION

8 - - -

9 BY ATTORNEY PISTILLI:

10 Q. You've never submitted a  
11 survey in litigation before examining a  
12 sociological question, correct?

13 A. There is nothing that comes  
14 to mind, except that I'm remembering a  
15 case that had to do with employee  
16 behavior and the extent to which they  
17 were paid for the time spent putting on  
18 protective gear and stuff like that.

19 So, I mean, that sort of  
20 gets at the -- one of the issues you  
21 raised earlier.

22 But I'm not sure what  
23 qualifies as a sociological issue. I  
24 mean, the -- we talked earlier about the

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1 case against Meta that I was involved in.  
2 And I hadn't realized it had settled, or  
3 maybe it hasn't settled, but my survey in  
4 that case had to do with individuals'  
5 attitudes toward privacy. And I guess  
6 that would fall into the category of a  
7 sociological survey.

8 Q. I think we earlier discussed  
9 that all of your prior testimony related  
10 to goods or services made available to  
11 the consumer public or other businesses,  
12 correct?

13 ATTORNEY JACOBSON:

14 Objection. Form.

15 THE WITNESS: Well, it had  
16 to do with consumer behavior. And  
17 often there was a product or a  
18 service involved in that.

19 BY ATTORNEY PISTILLI:

20 Q. Right. So your -- your  
21 testifying experience relates to consumer  
22 behavior?

23 ATTORNEY JACOBSON:

24 Objection. Form. Misstates

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1 testimony.

2 THE WITNESS: Well,  
3 surveys -- I'm sorry.

4 Surveys that describe  
5 consumer behavior or consumer  
6 wants and needs.

7 BY ATTORNEY PISTILLI:

8 Q. Just one other quick point  
9 to follow up on.

10 You testified a moment ago  
11 that you asked information in your survey  
12 about when teachers began teaching at  
13 their school?

14 A. I believe that's correct.

15 Q. And if you want, I can help  
16 and we can look at Exhibit-1 as an  
17 example.

18 ATTORNEY JACOBSON: Is --  
19 this seems outside the scope of  
20 redirect.

21 ATTORNEY PISTILLI: I'm just  
22 trying to clarify. I mean, you  
23 can object.

24 ATTORNEY JACOBSON: You're

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1           clarifying my four questions about  
2           whether testimony had been  
3           excluded before?

4                   ATTORNEY PISTILLI: After I  
5           finished examining, he said  
6           something that I don't think was  
7           accurate. And I'm trying to  
8           follow up on that.

9                   ATTORNEY JACOBSON:  
10          During --

11                   ATTORNEY PISTILLI: If  
12          you're unwilling to let me  
13          question on that, you can make  
14          your objection, and we'll take it  
15          to the court if we need to.

16                   ATTORNEY JACOBSON: You had  
17          passed the witness. And so we  
18          will object to questioning that's  
19          outside the scope of redirect.

20          BY ATTORNEY PISTILLI:

21                  Q. Am I right, sir, that in  
22          Screening Question 2, you did ask about  
23          when teachers -- oh, not Screening  
24          Question 2 --

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1 A. 5.

2 Q. -- Screening Question 5, you  
3 asked about when teachers started at  
4 their current school, right?

5 A. Yes.

6 Q. But, in fact, when you asked  
7 teachers about social media use in Survey  
8 Question 5, you didn't use that  
9 information as an anchor, correct?

10 A. If it was prior to -- and  
11 I'm looking at Page D-19.

12 If it was prior to 2015,  
13 then -- or 2014, then we didn't ask about  
14 their current -- when they first started  
15 teaching.

16 ATTORNEY PISTILLI: Thank  
17 you. No further questions.

18 ATTORNEY WHITELEY: I have  
19 one follow-up question based on  
20 plaintiffs' questioning.

21 - - -

22 EXAMINATION

23 - - -

24 BY ATTORNEY WHITELEY:

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1 Q. Okay. Mr. Klein, this is  
2 Daniel Whiteley again.

3 In how many of those  
4 hundreds of cases that plaintiffs'  
5 counsel just asked you about did you  
6 conduct a survey asking employees of one  
7 of the parties to estimate the minutes  
8 they have spent on certain tasks over a  
9 period of years?

10 ATTORNEY JACOBSON:

11 Objection. Form.

12 THE WITNESS: I don't think  
13 I've ever done something in the --  
14 that -- in the -- that would meet  
15 the characteristics that you just  
16 described.

17 ATTORNEY WHITELEY: Thank  
18 you.

19 I'll give this back to you.

20 ATTORNEY PISTILLI: Are we  
21 done?

22 ATTORNEY WHITELEY: Lisa,  
23 did you have more questions?

24 ATTORNEY HORVATH: Mr.



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1 Whiteley just asked mine. So I  
2 think I'll pass.

3 VIDEO TECHNICIAN: I'll now  
4 be stating the on-record times for  
5 each party.

6 Christian Pistilli,  
7 representing Meta, 5 hours 12  
8 minutes. Faraz Shahidpour,  
9 representing Snap, went 16  
10 minutes. Daniel Whiteley,  
11 representing YouTube, went nine  
12 minutes. Lisa Horvath,  
13 representing TikTok, went 15  
14 minutes. Jordan Jacobson,  
15 representing plaintiff, went one  
16 minute.

17 The time is 5:26 p.m., and  
18 we are off the record.

19 - - -

20 (Whereupon, the deposition  
21 concluded at 5:26 p.m.)

22 - - -

23

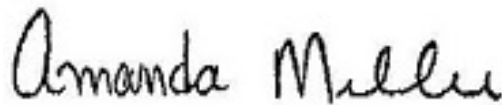
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CERTIFICATE

I HEREBY CERTIFY that the  
witness was duly sworn by me and that the  
deposition is a true record of the  
testimony given by the witness.



Amanda Maslinsky-Miller

Certified Realtime Reporter

Dated: September 7, 2025

(The foregoing certification  
of this transcript does not apply to any  
reproduction of the same by any means,  
unless under the direct control and/or  
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INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.

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			E R R A T A
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ACKNOWLEDGMENT OF DEPONENT

I, \_\_\_\_\_, do  
hereby certify that I have read the  
foregoing pages, 1 - 321, and that the  
same is a correct transcription of the  
answers given by me to the questions  
therein propounded, except for the  
corrections or changes in form or  
substance, if any, noted in the attached  
Errata Sheet.

\_\_\_\_\_  
ROBERT KLEIN

\_\_\_\_\_  
DATE

Subscribed and sworn  
to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

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[time - tucson]

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[tucson - usable]

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[witness - writing]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted

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Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at [www.veritext.com](http://www.veritext.com).